

In the 1st Court of Ld. Additional District Judge, Sealdah

Title Appeal No. 44 of 2024

Order no.04 dated 28.02.2025

Ld. Advocates for both sides are present.

A petition was filed praying for stay of execution of the judgment and decree passed in Title Suit No. 212 of 1991 (21 of 2017) by the Ld. Civil Judge (Junior Division), Additional Court, Sealdah .

The Ld. Advocate for the respondents filed objection against the said application.

This is obviously an application u/o 41 rule 5 CPC.

It appears from the impugned judgment dated 30.07.2024 that the respondents were the absolute owner of the suit property by dint of a registered deed of sale dated 03.02.1982. The said accommodation was given on rent to one Md. Amin on payment of monthly rent. From the judgment it also appears that present appellants were the tenants under the original tenant Md. Amin and in spite of service of demand notice upon the present appellants they never paid any rent and they also carried out some unauthorized construction in the suit premises without the consent of the present respondents. Prayer was made before the Ld. Trial court for eviction of the present appellants on the ground of non payment of rent and reasonable requirement of the present respondents.

It also appears from the judgment that notice was properly served upon the present appellants in the year 1990 but they did not give honour to the said notice.

The present appellants being the defendants contested the suit by filing WS and they have categorically denied all the allegations made in the plaint.

It was the specific case of the said defendants that the title of the suit property was clouded and several other Civil litigation were there and as such, the present respondents had no right to claim themselves as the owner of the suit property and accordingly, they prayed for dismissal of the suit.

The Ld. Trial Judge after recording evidences and on analyzing the documents submitted has been pleased to hold that the present appellants being the defendants should be evicted from the suit property and decree was drawn up accordingly.

The said judgment and decree was challenged before this court in the instant appeal.

At the time of hearing of the said stay application it was contended on the part of the respondents/plaintiffs that the stay may be granted on payment of occupational charges as the present

appellants did not vacate the suit property as yet in compliance with the decree drawn in the suit by the Ld. Trial Judge.

While passing an order of stay u/o 41 rule 5 CPC the Appellate Court may ask the applicant to arrive at reasonable terms as would in its opinion be reasonable to compensate the decree holder for loss caused by delay in execution of decree.

Therefore, at the time of awarding of stay of execution of a decree of eviction, the Appellate Court must keep it in mind that the same may not deprive the successful landlord to avail the fruits of the decree.

In this regard, I want to rely upon the decision of the Hon'ble Apex Court as reported in *2005(1)SCC 705 (M/s Atmaram Properties Pvt. Ltd. vs. M/s Federal Motor Pvt. Ltd.)*.

In the said decision, it was observed by the Hon'ble Court that the appellant cannot escape from providing occupational charges.

I also want to follow the ratio of another decision of the Hon'ble Apex Court as reported in *2009(9)SCC 772 (State of Maharashtra vs. Supermax Pvt. Ltd.)*.

In this case, the Hon'ble Apex Court affirmed and reiterated the ratio laid down in *Atmaram Properties Case*, but it was advised that while determining the quantum of occupational charges, the court must bear in mind that those are not excessive, fanciful and punitive in nature.

From the schedule of property as noted in the decree, it appears that the suit property comprises of seven rooms with bath and privy situated at premises No. 65, Narkeldanga North Road, PS Narkeldanga, Kolkata-11.

The Ld. Advocate for the respondents made a prayer for fixing the occupational charge to the tune of Rs. 45,000/- to 50,000/- per month considering the prevailing rate of house rent of the said locality and considering the amenities available in the said suit property and its vicinity.

In support of their contention a series of google map were produced and also a list was submitted to show the prevailing rate of house rent in the locality.

It was also submitted that the occupational charge may be credited to the account of respondent no. 2 Izhar Hossain and photocopy of cancelled cheque of the account of the said respondent No. 2 lying with the Indian Bank vide account No. 20114641062 is placed.

The Ld. Advocate for the appellants raised objection in respect of the submission of the respondents.

It was submitted that the present respondents have filed one execution proceeding vide Title Execution No. 07 of 2025 to put the

decree in execution and if no stay order be passed, the entire purpose of filing of the instant appeal will be frustrated and the appellants will suffer irreparable loss.

It was also submitted that the amount claimed by the respondents as occupational charges is exorbitant and has no basis at all. It was submitted by the Ld. Counsel for the appellants that it is fact that the respondents are entitled to get the occupational charges as the appellants are still now in possession of the suit premises but the said charge should be calculated properly.

In support of his contention, a decision of the Hon'ble Division Bench of High Court, Calcutta as reported in 2021 (1) ICC 1071 (Cal) (Namita Dey and others Vs Kabita Dutta and other) is placed.

I have gone through the said decision.

Coincidentally the suit property of this case and the suit property of the matter before the Hon'ble Court situate more or less same locality having a mixed occupancy i.e commercial and residential.

I want to keep in mind the ratio of the observation of the Hon'ble Court in the said decision.

In that case, the Hon'ble Court has been pleased to hold that the occupational charges should be paid from the date of decree and the rate was calculated to the tune of Rs 2,000/- per month. The Hon'ble Court has also been pleased to instruct the appellants to deposit the arrear rent.

While passing the said judgment, the Hon'ble Court also kept reliance upon the decision of the Hon'ble Apex Court in *Atmaram Properties Pvt. Ltd. vs. M/s Federal Motor Pvt. Ltd.*

I have considered all the aspects and the decision of the Hon'ble Apex Court as well as Hon'ble High Court, Calcutta. I have also considered the position of the suit property and its area along with the amenities available within the close vicinity of the suit property.

Keeping in view of all parameters mentioned above, I am of the view that a sum of Rs.10,000/- (Rupees Ten Thousand) only would be reasonable as the occupational charge during pendency of the instant Appeal.

The appellants are directed to pay the said sum from the date of decree (02.09.2024) drawn by the Ld. Civil Judge (Junior Division), Additional Court, Sealdah in Title Suit No. 212 of 1991 (Title suit No. 21 of 2017)

On payment of such sum along with the arrear rent, the operation of the execution of decree arising out of Title Suit No. 212 of 1991 (Title suit No. 21 of 2017) will be stayed pending the hearing of the appeal.

I want to mention that this 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.

Any default of payment of the occupational charges, as aforesaid for two consecutive months, the stay order will be vacated without further mentioning before this court.

The appellant will go on paying the occupational charges by depositing the said sum in the bank account of the respondent no. 2 as mentioned above.

The appellant is directed to pay the arrears of occupational charges, if any, within two months from this date.

Call for the T.C.R.

To **22.04.2025** for hearing of the appeal.

Let a copy of this order sheet be sent to the Ld. Civil Judge (Junior Division), Additional Court, Sealdah with direction to send the TCR.

D/C by

(Anirban Das)/ WB00691,
Additional District Judge,
1st Court Sealdah

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Additional District Judge,
1st Court, Sealdah