

GAHC010036012026



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/677/2026

M/S L.M. COMMERCIAL HOUSE
A PARTNERSHIP FIRM HAVING ITS HEAD OFFICE AT NAGAON TOWN, P.O.
AND DIST.- NAGAON, (ASSAM) REPRESENTED BY ITS PARTNERS VIZ. 1.
SRI LAXMIPAT CHORARIA, AGE 70 YRS, SON OF LATE CHAND CHORARIA,
RESIDENT OF MULLAPATTY, DIST.- NAGAON, ASSAM AND 2. MD. IMDAD,
AGED ABOUT 58 YRS, S/O LATE WAHID UDDIN, R/O DACCAPATTY,
NAGAON TOWN, DIST- NAGAON, ASSAM

2: MD IMDAD
SON OF LATE WAHID UDDIN
RESIDENT OF DACCAPATTY NAGAON TOWN
DIST- NAGAON
ASSA

VERSUS

CHITTARANJAN PATOWARY
S/O LATE K.C. PATOWARY, R/O VIVEKANANDA PATH, G.S. ROAD,
ULUBARI, GUWHAATI-7, DIST- KAMRUP (M), ASSAM

Advocate for the Petitioner : J SHARMA, MR. P THAKURIA, G. DAS, ABHIJIT PATOR

Advocate for the Respondent : MR. D MOZUMDER (FOR CAVEATOR), MR. S BISWAS (FOR CAVEATOR), MS D DEVI (FOR CAVEATOR)

Linked Case : RFA/19/2026

M/S L.M. COMMERCIAL HOUSE

A PARTNERSHIP FIRM HAVING ITS HEAD OFFICE AT NAGAON TOWN
P.O. AND DIST.- NAGAON
(ASSAM) REPRESENTED BY ITS PARTNERS VIZ. 1. SRI LAXMIPAT
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G.S. ROAD
ULUBARI
GUWHAATI-7
DIST- KAMRUP (M)
ASSAM

Advocate for : J SHARMA
Advocate for : MR. D MOZUMDER (FOR CAVEATOR) appearing for
CHITTARANJAN PATOWARY

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 30.03.2026

[1] Heard Mr. G. N. Sahewala, the learned Senior Counsel,
assisted by Mr. J. Sharma, the learned counsel
for the applicants. Also heard Mr. D. Mozumder, the learned Senior
Counsel, assisted by Mr. S. Biswas, the

learned counsel for the Caveator/respondent.

[2] This Interlocutory Application under Order 41, Rule 5 of the Code of Civil Procedure, 1908, has been filed by the applicants in connection with the Regular First Appeal No. 19/2026, praying for stay of execution of the judgment and decree dated 05.01.2026, passed by the Court of learned, Civil Judge (Senior Division) No. 3, Kamrup(Metro) at Guwahati, in Title Suit No. 01/2009. The said judgment and decree has been impugned by the applicants in the connected Regular First Appeal.

[3] Mr. G. N. Sahewala, the learned Senior Counsel for the applicants, has submitted that the trial court failed to consider the observations made by this court while considering the evidence on the record and gave a perverse finding in the impugned judgment and decree. He submits that there is every possibility of the applicants getting a favourable order in the connected appeal.

[4] He further submits that, as the respondent has already filed an Execution Case, namely, Execution Case No. 04/2026, before the Executing Court, i.e., the Court of learned Civil Judge No. 3, Kamrup (Metro) at Guwahati, the applicant had filed an application before the Executing Court under Order 21, Rule 26 of the Code of Civil Procedure, 1908 for stay of execution till the period of filing the appeal and, by its order dated 03.02.2026, the execution of the impugned decree was stayed till 05.03.2026. He submits that the present applicant was directed to deposit 25% of the decretal arrear rent amount before the Executing Court. Accordingly, the applicants had already deposited an amount of Rs. 4,32,000/- (Rupees Four

Lakhs Thirty-Two Thousand only), being the 25% of the decretal arrear rent amount before the executing court.

[5] The learned Senior Counsel for the applicants has further submitted that, in the impugned judgment itself, the trial court has clearly stated that the amount of interest-free refundable security of Rs. 20,00,000/-(Rupees Twenty Lakhs only) which was deposited by the present applicants to the respondent at the time of commencement of tenancy shall have to be returned or adjusted against the arrear rent. He further submits that, as the connected appeal has already been admitted and fixed for hearing, endeavour may be made for expeditious disposal of the connected appeal and in the meantime, the execution of impugned judgment and decree may be stayed during pendency of the connected regular appeal without imposing any further condition.

[6] The learned Senior Counsel for the applicants has submitted the before passing of the impugned judgment, the trial court, on an earlier occasion had passed the judgment dated 15.06.2015 in the aforesaid suit, whereby, the suit of the plaintiff/respondent was decreed. The present appellant on being aggrieved by the aforesaid judgment preferred a Regular Second Appeal, which was registered as RFA No. 39/2015 before this court. He further submits that the said appeal was allowed by this court, by its judgment dated 17.03.2006, and the matter was remanded back to the trial court for affording an opportunity to both the parties to adduce further evidence and, thereafter, dispose of the case by delivering a fresh judgment. While allowing the aforesaid appeal, this court also held

that the tenancy agreement which was exhibited by the plaintiff in the suit as Exhibit-1 was inadmissible in evidence as the same was an unregistered deed. He submits that the trial court by passing the impugned judgment this time also erred in relying on the aforesaid exhibit in ascertaining the rent for the suit premises at Rs. 2,88,000/- (Rupees Two Lakh Eighty-eight Thousand only) instead of 24,000/- (Rupees Twenty-Four Thousand only) which the present appellant had proved by exhibiting Exhibit-T.

[7] The learned Senior Counsel for the applicant further submits that in the prayer portion of the plaint filed by the present respondent before the trial court, there was no prayer for any relief of realization of future rent. He also submits that the plaintiff has filed various money suit for realization of rent of the suit premises namely, Money Suit No. 239/2010, Money Suit 269/2013, Money Suit No. 220/2016 and Money Suit No. 96/2019, which are pending in the courts of learned Civil Judge No. 2 and Civil Judge No. 3, Kamrup (Metro) at Guwahati. Hence under aforesaid circumstances, he submits that the execution of decree, which has been impugned in the connected appeal may be stayed without imposing any additional security on the applicant.

[8] On the other hand, Mr. D. Mozumder, the learned Senior Counsel for the respondent has opposed the grant of any stay of execution of the impugned judgment and decree during the pendency of the connected Regular First Appeal No. 19/2026. He submits that the trial court after considering the evidence of PW-1 and other materials on record came to the specific finding that the

monthly rent of the suit premises is Rs. 2,88,000/- (Rupees Two Lakh Eighty-Eight Thousand only).

[9] He submits that at that rate the arrear rent due from the applicants for the period from June 2008 to February, 2026, i.e. for 212 months comes at Rs. 6, 10,56,000/- (Rupees Six Crore Ten Lakh and Fifty-Six Thousand only) and if the advance security deposit of Rs. 20,00,000/- (Rupees Twenty Lakh only) is deducted therefrom, it comes at Rs. 5,90,56,000/- (Rupees Five Crore Ninety Lakh Fifty-Six Thousand only). The learned Senior Counsel for the respondent submits that the respondent is agreeable to grant of stay of the impugned decree, only on a condition that the applicants may be directed to deposit 75 % of the outstanding arrear amount of rent.

[10] He submits that the trial court has rightly discarded the Exhibit-T agreement, which was sought to be relied upon by the applicants, in trying to establishing that the rent of a suit premises is Rs. 24,000/- (Rupees Twenty-Four Thousand only).

[11] He submits that the said amount of rent is, otherwise, also is illogical, as the suit premises is located in a prime location on G.S. Road between Paltan Bazar and Ulubari and, if, the rent, which the applicants are stating to be the rent of the suit premises is to be believed, then it comes @ of Rs. 2/- (Rupees Two only) per square feet as the suit premises comprises of an arrear of appropriately 16,000/- square feet.

[12] I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record.

[13] It appears that the connected Regular First Appeal No. 19/2026 in which the present appellant, has impugned the judgment and decree dated 05.01.2026, passed in Title Suit No. 1/2009 by the court of learned Civil Judge (Senior Division) No. 3, Kamrup (Metro) has already been admitted and the records of the trial court have been called for.

[14] The contentions raised by learned counsel for both sides as regards the rate of rent in respect of the suit premises, i.e., whether it is Rs 2,88,000/- (Rupees Two Lakh Eighty-Eight Thousand only) per month or whether is it only Rs. 24,000/- (Rupees Twenty-Four Thousand only) per month, is to be decided in the connected appeal after a full hearing. Hence, any observation to that regard may not be made here, while deciding this Interlocutory Application, as same may have a bearing in the outcome of the connected appeal and may be prejudicial to one of the parties.

[15] However, while passing an Order under Rule 5, of Order 41 of the Code of Civil Procedure, 1908, this court does have a jurisdiction to put the applicant on such reasonable terms, as would reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by grant of stay order, in event of ultimately the appeal being dismissed.

[16] By the impugned decree, the present respondent was found entitled to recovery of arrear rent of the suit premises @ of Rs. 2,88,000/- (Rupees Two Lakh Eighty-Eight Thousand only) per month w.e.f. the month of June of 2008 till the ejectment of the present applicant. The arrear rent for the aforesaid period, according

to the learned counsel for the respondent comes at Rs. Rs. 5,90,56,000/- (Rupees Five Crores Ninety Lakh Fifty-Six Thousand only). Whereas, the contention of the applicant is that it has already deposited an amount of Rs. 4,32,000/- (Rupees Four Lakh Thirtytwo Thousand only) before the Executing Court for stay of execution in terms of Order 21, Rule 26 of the Code of Civil Procedure, 1908.

[17] As already discussed hereinbefore that whether the trial court was right in ascertaining the rent of the suit premises @ of Rs. 2,88,000/- (Rupees Two Lakh Eighty-Eight Thousand only) per month or not is the subject-matter of the connected appeal, however, even if we take the rent on the lower side, i.e. Rs. 24,000/- (Rupees Twenty-Four Thousands only) per month, still the arrear rent for 212 months comes to Rs. 50,88,000/-(Rupees Fifty Lakhs Eighty-Eight Thousand only). If we deduct the amount of Rs. 20,00,000/- (Rupees Twenty Lakhs only), which has been deposited as advance money by the applicant with the respondent at the time of commencement of the tenancy agreement, still the due arrear rent comes to the tune of Rs. 30,88,000/-(Rupees Thirty Lakhs Eighty-Eight Thousands only).

[18] As this court has to impose a reasonable condition pending the resolution of the dispute in the connected appeal, this court is of considered opinion that payment of 50% of the aforesaid amount by the applicants as a condition for stay of execution of the impugned decree would be reasonable under the facts and circumstances of this case at this stage.

[19] Accordingly, the impugned judgment and decree dated

05.01.2026, passed by the court of learned Civil Judge (Senior Division) No. 3. Kamrup (Metro) at Guwahati in Title Suit No. 01/2009 is hereby stayed, during the pendency of the connected Regular First Appeal No. 19/2026, subject to payment of amount of Rs. 15,44,000/- (Rupees Fifteen Lakhs Forty-Four Thousands only) by the applicants before the Registry of this court within a period of two weeks from the date of this order.

[20] This Interlocutory Application (Civil) is, accordingly, disposed of.

JUDGE

Comparing Assistant