

28.01.2026

A.Bhar
SL. No. 1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELALTE SIDE

SA 48 OF 2024
With
IA No.: CAN 2 of 2023

Sova Ghosh.
-Versus-
Tripti Roy And Ors.

Mr. Souradipta Banerjee,
Ms. Fatima Hassan,
Ms. Shamrin

...for the appellant.

Mr. Kaushik Dey,
Mr. Debdipto Banerjee,
Mr. Soumen Banerjee.

....for the respondent nos. 1 to 3.

The appellant before this Court was a defendant/tenant in a suit for eviction before Learned 2nd Bench Presidency Small Causes Court Calcutta in Ejectment Suit No. 20 of 2008 and upon suffering an eviction decree preferred an appeal before Learned City Civil Court Calcutta which was also dismissed. The appellant being aggrieved by the Judgment dated 26-08-2022 passed by Learned Judge IInd Bench City Civil Court Calcutta in Title Appeal 62 of 2017 has come up with the instant appeal.

The Appeal preferred by the appellant was admitted by the Hon'ble Division Bench of this Court by Order dated 29-04-2024. An interim order of Stay of Ejectment Execution case No-113 of 2017 and the

Misc Case No. 226 of 2017 pending before the Learned Judge 2nd Bench presidency Small Causes Court at Calcutta arising out of Ejectment Suit No. 20 of 2008 was passed till the end of July 2024 or until further orders whichever is earlier. As the interim order of stay has expired the appellant has prayed for extension of interim order and hearing of the appeal.

The plaintiffs/respondents no. 1 to 3 have filed affidavit in opposition to the application for stay denying the allegations made therein. It is contended that the decretal property had admittedly been let out for residential purpose and the decretal property is consisting of two rooms on the ground floor measuring about 240 square feet together with undivided proportionate share of appurtenant land and common amenities in a two storied building lying and situate at premises No-7/6, Raja Raj Ballav Street, Ward No-8 P.S. Shyampukur Kolkata-700003. It is further contended that the Learned First Appellate Court did not have the report of Chartered Engineer when the order of stay of the decree of Trial Court was passed. The respondent no-2 appointed Chartered Engineer for assessing market letting out value of the decretal property in question and the said valuer had assessed the fair market rent of the decretal property of Rs. 54/- per square feet per month.

It is also contended that the decretal property consists of two rooms on the ground floor measuring about 240 square Feet together with undivided proportionate share of apartment land and common amenities in a two storied building lying and situate at premises No. 7/6, Raja Raj Ballav Strret Ward No. 8, P.S. Shyampukur Kolkata-700003. It is a very busy commercial area in the North Calcutta. Various schools Bank, Shapping Complex, Markets, Hospitals etc. are situated within the walking distance.

It is submitted that this Hon'ble Court should impose condition for payment of occupational charges of at least Rs. 54/- per square feet per month (240 sq.ft. XRs. 54) =Rs. 12,690/- per month from decree passed by the Learned Appellate Court.

The appellant in her affidavit in reply has denied the contentions made in the affidavit in opposition. It is contended that the measurement of the suit tenancy as stated by the respondent is incorrect. The tenancy consists of a maximum of 120 square feet in an extremely shabby state and is an old and dilapidated building lying in a disrepaired condition since long. It is further contended that the alleged chartered Engineer never visited the suit property at any point of time and accordingly the measurements given in the said opposition in respect of the suit is absurd, vague as all paramaters as

discussed by the said chartered engineer are on the basis of such assumed measurement and the same has no nexus with the reality and cannot be considered by this Hon'ble Court.

It is also contended that the location of the suit tenancy as described in the alleged Engineer's Report is incorrect as the same is situated far away from the main road having entry through a very narrow lane and the same is lying in an extremely dilapidated old and disrepaired condition where water is percolating. It is contended that the occupational charges as demanded by the respondents as per Chartered Engineer report is arbitrary and unlawful as the actual dilapidated condition of the decretal property situated in the slum area of North Calcutta is not property demonstrated and discussed in the report hence the report cannot be looked into.

Heard Learned Advocates for the parties.
Perused the materials on record.

The following decision is relied upon by the Learned Advocate for the appellant.

Atma Ram properties (P) Ltd. VS Federal Motors (P) Ltd.

Reported in (2005) 1 SCC. P-705.

Upon hearing the Learned Advocates and considering the total petition filed and the affidavits this Court is of the view that in order to decide fair and reasonable

occupation charges Court should have a picture of the total area of the suit property the age of the suit property, condition of the suit property, amenities available, location, and rents/occupational charges existing in the area. Although the respondents have relied upon a valuation report by a chartered Engineer but the fact that the appellant has disputed the area mentioned in the report, and the report does not mention age of the premises, and thirdly the fact that the inspection was not made in the presence of both parties, this Court is of the view that in the interest of Justice it would be proper that inspection of the suit premises be made by a special officer to be appointed by this Court in presence of both parties and their Learned Advocates.

Thus Mr. Chittaranjan Ghosh Learned Advocate Ph-9433788061 is appointed as special officer. Learned Special Officer shall upon notice to both parties and their Learned Advocates visit the suit premises, take clear photographs of the suit premises, ascertain the age of the suit premises take measurement of the total area of suit premises and specify the common amenities which are available to the appellant. The rent prevailing in the area of the premises adjacent to the suit premises, whether the suit property is situated in the slum area, or not and approximate distance to the main road should also be noted. With

regard to measurement of the suit property a surveyor may be appointed if agreed by the parties at the cost to be shared by the parties.

Upon causing the inspection Learned Special Officer shall submit the report. Such inspection shall be made within 2 weeks from the date of communication of this order and the report should be submitted within one week thereafter.

Learned Special Officer shall be entitled to a remuneration of 400 GM. to be shared by the parties.

Fix 23/02/2026 for Report of the Learned Special Officer.

The interim Order stands extended for a period of 8 weeks or till further orders whichever is earlier.

Without prejudice to the rights of the parties the appellant shall go on paying the monthly rent/occupational charges which was last paid before the Learned First Appellate Court pending hearing of this application. Such payment shall be made within 3rd day of every Calendar month.

(Biswaroop Chowdhury, J.)