

Sl.29
16.07.2026
Court No.6
BP

C.O. 2164 of 2026

Smt. Uma Dey
-versus-
Ratanlal Barman

Mr. Ayanava Bhattacharyya,
..for the petitioner

Mr. Dhananjay Banerjee
Mr. Archan Datta
Mr. Partha Sarathi Mishra
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the judgement debtor and is directed against an order being no. 14 dated 22nd June, 2026 passed by the learned Additional District Judge, 2nd Court at Serampore in Misc. Appeal No.11 of 2025.

By the order impugned the learned judge of the appellate court passed an order of stay of all further proceedings in Misc. Case No. 56 of 2019 arising out of Title Execution Case No. 10 of 2013 which has been renumbered as Title Execution No. 455 of 2014 subject to payment of occupation charges.

The learned advocate appearing for the petitioner submits that the quantum of occupation charges fixed by the learned judge of the appellate court is an excessive one. He submits that the petitioner is in occupation of a shop room measuring about 30 sq.ft. He submits that the

market rate of rent of a similar shop room in the same locality is about Rs. 2,500/- per month. He further submits that the application for payment of occupation charges was filed only on 19th May, 2026 and any direction for payment of occupation charges could not have been passed with a retrospective effect. He further submits that the learned judge of the appellate court directed the petitioner to pay monthly rent in addition to the occupation charges which is not permissible in law.

The learned advocate appearing for the opposite party submits that the market rate of occupation charges of a similar shop room in the said locality is not less than Rs. 15,000/- per month. He further submits that the miscellaneous appeal was initially dismissed on an objection being raised by the opposite party against the maintainability of the said miscellaneous appeal. However pursuant to an order passed by a Co-ordinate Bench in C.O. 3308 of 2025 on 2nd April, 2026 the miscellaneous appeal stood restored. He submits that the learned judge of the appellate court was right in directing the petitioner to pay occupation charges from the date of passing of the order in Misc. Case which was challenged in the miscellaneous appeal.

Heard learned advocates for the parties and perused the materials placed.

Title Suit No. 108 of 2006 was filed by the opposite party herein praying for declaration of title and for recovery

of khas possession. The said suit stood decreed on contest by a judgement and decree dated August 31, 2009. The petitioner preferred an appeal being Title Appeal No. 169 of 2009 which stood dismissed by a judgement and decree dated December 20, 2012. Thereafter the decree was put into execution giving rise to Title Execution Case No. 10 of 2013 which was subsequently renumbered as Title Execution Case No. 455 of 2014. Since the decree holder was resisted/ obstructed in the matter of execution of the decree, a miscellaneous case under Order 21 Rule 97 of the Code of Civil Procedure read with Rule 208 of the Civil Rules and Order was filed by the opposite party herein giving rise to Misc. Case No. 56 of 2019. The said misc. case was allowed thereby requesting the Commissioner of Police, Chandannagar Police Commissionerate to inform the court as to the probable cost of rendering police assistance at the locale of the decreetal property at the time of execution of the decree. Challenging the order dated 19th February, 2025 in Misc. Case No. 56 of 2019 the petitioner preferred a miscellaneous appeal being no.11 of 2025 which was initially dismissed on an objection being raised by the opposite parties against the maintainability of the said miscellaneous appeal. Thereafter the petitioner preferred a title appeal. However pursuant to an order passed in the civil revisional application the petitioner withdrew the title appeal and the miscellaneous appeal was restored to its original file and number. The order restoring

the miscellaneous appeal was passed by a Co-ordinate Bench on 2nd April, 2026 in C.O. 3308 of 2025.

The Co-ordinate Bench granted a limited interim order and granted liberty to the parties to approach the learned judge of the appellate court for fixation of occupation charges.

Pursuant to such liberty the opposite party filed an application for fixation of occupation charges as a condition for grant of stay. Such application was contested by the petitioner herein by filing a written objection thereto.

In the application praying for fixation of occupation charges the opposite party has stated that the prevailing rate of rent for commercial shop rooms in the locality is approximately Rs. 15,000/- per month.

Though the petitioner denied the statements made by the opposite party in the application for fixation of occupation charges insofar as the quantum of the occupation charges is concerned but did not specifically state about the prevailing market rate of occupation charges.

No document was produced by either of the parties before the learned judge of the appellate court in support of their respective contentions as to the prevailing market rate of rent.

The petitioner has suffered a decree for eviction. Thereafter the opposite party obtained an order for police

help and the petitioner has challenged such order in a miscellaneous appeal.

Since the petitioner has availed of a statutory remedy of appeal, unless an interim protection is granted, such appeal would become infructuous. This Court also cannot lose sight of the fact that even after obtaining a decree for eviction and an order of police help for execution of such decree the opposite party is being prevented from enjoying the fruits of the decree. Thus the opposite party is entitled to be compensated for being deprived of enjoying the fruits of a decree for a considerable period of time. The petitioner is occupying the decreetal property and is exploiting the same for commercial purpose. Therefore, the petitioner is liable to pay occupation charges for occupying the decreetal property after having suffered an eviction decree.

This Court is, therefore, of the considered view that the learned judge of the appellate court was right in directing the petitioner to pay occupation charges with effect from 18th February, 2025 i.e. the date of the order passed in Misc. Case No. 36 of 2019 which is the subject matter of challenge in the miscellaneous appeal.

Insofar as the quantum of occupational charges is concerned, this Court finds that none of the parties have produced materials before the learned judge of the appellate court as to the prevailing market rate of rent. Though the opposite party has specifically stated that the prevailing market rate of rent to be of Rs. 15,000/-, the

petitioner was silent in the written objection thereto as to the prevailing rate of rent.

However, after considering the measurement of the decreetal property and the locality where it is situated, this Court is inclined to reduce the occupation charges to some extent. The occupation charges fixed by the learned judge of the appellate court is reduced to Rs. 5,000/- per month.

The learned advocate appearing for the petitioner is justified in arguing that the petitioner cannot be directed to pay the monthly rental amount in addition to occupation charges.

The portion of the order directing the petitioner to pay monthly rent in addition to the occupation charges is accordingly set aside.

The arrear occupation charges till the month of July, 2026 shall be paid in five equal instalments starting from the month of August, 2026 in the same manner as directed by the learned judge of the appellate court. The petitioner shall pay the current occupation charges on and from the month of August, 2026 within the time limit as indicated by the learned judge of the appellate court in the impugned order.

The impugned order stands modified only to the extent as indicated hereinbefore.

C.O. 2164 of 2026 stands disposed of with the aforesaid observations.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)