

18.01.2024
Crt. No.21
Item Nos.13 & 14.
KB

S.A.T. 177 of 2023
Dharamvir Kumar Singh
Vs.
Sarat Kumar Gupta & Ors.

with

S.A.T. 178 of 2023
with
IA No. CAN 1 of 2023

Dharambir Kumar Singh
Vs.
Sarat Kumar Gupta & Ors.

In Re: IA No. CAN 1 of 2023
in
S.A.T. 178 of 2023

Mr. Gopal Chandra Ghosh
... For the appellant
in both the matters.

Mr. Tarak Nath Halder
Mr. Sagnik Chatterjee
Ms. Srijita Nath
... For the respondent Nos.
1 to 3 in both the matters.

The learned counsel appearing on behalf of the appellant in both the matters submits that at the time of admission of the instant appeal the learned counsel appearing on behalf of the respondents no. 1 to 3 was heard by the Hon’ble Division Bench and after hearing both the learned counsels the Hon’ble

Division Bench has been pleased to pass an unconditional order of stay.

He further submits that he does not have any document to show that what is the prevailing rate of rent in the said locality where the suit property is situated and further submits that Rs.3,000/- per month which has been imposed by the First Appellate Court as occupational charges at the time of staying of the execution proceedings of the Trial Court on 28th January, 2021 is much exorbitant.

He further submits that the appellant is willing to pay occupational charges but not at the rate of Rs.3,000/- per month which is excessive.

The learned counsel appearing on behalf of the Respondents No. 1 to 3 in both the matters submits that the First Appellate Court at the time of staying of the execution had passed an order imposing occupational charges at the rate of Rs.3,000/- on 28th January, 2021 which has not been assailed by the present appellant in both the matters and the said order is still persisting but in spite of prevalence of the said order the appellant is not paying a farthing.

He further submits that an amount of Rs.3,000/- per month which has been assessed as

occupational charges by the First Appellate Court is a just one and as the said order has not been assailed, so it is binding upon the parties.

In support of his contention, the learned counsel produced two authorities passed by the Hon'ble Apex Court published in (2005) 1 SCC 705 and in A.I.R. 1960 S.C.941.

By citing the aforementioned judgements, the learned counsel has once again reiterated that the amount assessed as occupational charges by the First Appellate Court is binding upon the parties and as such this Court is to rely upon the said assessment of the occupational charges made by the First Appellate Court.

He further submits that the property in question is situated at Moulali Crossing having 80 Sq.ft. on the roof of the second floor i.e. third floor.

At this stage, both the learned counsels submit that they will be further apprise the Court on the next date by filing citations and after obtaining further instructions.

In such situation, the matter is being fixed on **22nd January, 2024** under the heading **“Application”**.

From the record, it reveals that the Lower Court Records have not yet been called for. As such, let the Lower Court Records be called for by special messenger.

At this moment, learned counsel for the Respondent Nos.1 to 3 submits that the cost of the special messenger cost will be borne by the Respondent Nos. 1 to 3.

The said amount for special messenger is to be deposited within 22nd January, 2024 by the respondents.

After the said arrival of the Lower Court Records, the department is directed to go through the same and if it is found that the said record is complete, the department is directed to intimate the learned counsels appearing on behalf of the appellant and the respondent nos. 1 to 3 as regards to arrival of the records.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Supratim Bhattacharya, J.)