

(2013) 12 CAL CK 0003

Calcutta High Court

Case No: S.A. No. 314 of 2013 and CAN No. 535 of 13

Hiralal Shaw

APPELLANT

Vs

Bharati Manna

RESPONDENT

Date of Decision: Dec. 13, 2013

Citation: (2014) 3 CALLT 253

Hon'ble Judges: Tarun Kumar Gupta, J

Bench: Single Bench

Final Decision: Disposed Off

Judgement

Tarun Kumar Gupta, J.

This is an application filed by the appellant tenant praying for stay of Ejectment Execution Case No. 19 of 2013 filed by the respondent plaintiffs in the Court of learned Judge 4th Bench, Small Causes Court at Calcutta in terms of Eviction decree dated 10th of October, 2012 passed by learned Judge, City Civil Court, 5th Bench at Calcutta in Title Appeal No. 48 of 2010 reversing the judgement and decree dated 7th of June, 2010 passed by learned Trial Court in Ejectment Suit No. 382 of 2003. In connection with said application of stay parties filed affidavit-in-opposition, affidavit-in reply as well as supplementary affidavits. The admitted fact is that the petitioner tenant was in possession of the suit godown under O.P. landlord at a rental of Rs. 363 per month. Though the suit for eviction filed by the O.P. landlord failed in the trial court but it succeeded in lower appellate court vide judgement and decree dated 7th of June, 2010. As the second appeal has been admitted the petitioner tenant is entitled to get an order of stay of execution of said eviction decree through any execution case till disposal of the second appeal. Now the question is what will be the terms of said order of stay.

2. Mr. S.P. Roychowdury, learned senior counsel appearing for the petitioner tenant, submits that though the O.P. landlord is at liberty to get occupational charges from the petitioner tenant for occupation of the suit premises even after passing of an order of eviction but said amount cannot be excessive or repressive. He next

submits that at the time of fixation of said rent the court should keep in mind the relevant provisions of fixation of fair rent as per the concerned rent regulation. In support of his contention he refers case laws reported in [Niyaz Ahmad Khan Vs. Mahmood Rahmat Ullah Khan and Another](#), and [The State of Maharashtra and Another Vs. Super Max International Pvt. Ltd. and Others](#). He further submits that in the affidavit-in-reply the petitioner tenant has enclosed one copy of rent receipt showing payment of rent including taxes at the rate of Rs.1000/- per month for one shop room measuring about 17' X 4'6" in that area. He has also referred the enclosed report of one chartered engineer and valuer to show that the market rent of said old godown measuring about 1400 square ft. was around Rs. 11,200/- per month taking the unit rate at the rate of Rs. 3 per square foot.

3. Mr. Jahar Chakraborty, learned counsel appearing for the O.P. landlord, on the other hand, submits that from the judgment of [Atma Ram Properties \(P\) Ltd. Vs. Federal Motors Pvt. Ltd.](#), there were consistent views of the Hon'ble Apex Court as well as of this Court that a tenant suffering an ejectment decree can be permitted to occupy the suit premises only on payment of occupational charges at the rate of current market rent from the date of passing of the decree and not the contractual rent. According to him, there is no scope of considering the fair rent as per relevant Rent Act as it was not a case of fixation of rent of a premises in occupation of a lawful tenant rather it was a case of occupation of the suit premises by a person suffering an eviction decree and having present status as that of a trespasser. In this connection he refers a case law reported in [Anderson Wright and Co. Vs. Amar Nath Roy and Others](#). He also refers the report of the engineer valuer enclosed with the affidavit-in-opposition wherein said valuer opined that the current market rent of said old godown measuring about 1550 square feet was not less than Rs. 80 per square foot keeping in mind the market rent of godown in that area to be Rs.125 per square foot. In this connection he has also referred the market value/chargeability assessment slip of the suit godown to show that the present day market value of the suit godown is rupees one crore eighty one lakhs and odd as per current valuation of the property.

4. I have considered the submissions made by learned counsels of the parties. I have also perused the case laws referred by them. I have also considered the materials lying in the record.

5. In the case of Niyas Ahmad Khan (supra) the landlord filed a writ petition challenging the order of rejection of eviction petition and the High Court passed an interim order for payment of rent at a rate higher than the contractual rent. Under those circumstances Hon'ble Apex Court held that there was no scope to pass any such higher rent by the court. The facts of said case are quite different from the facts of the present case where the appellant tenant suffers an ejectment decree. As such, said case law has no application in this case.

6. In the case of State of Maharashtra and another (supra) it was held by the Hon'ble Apex Court that in fixing the amount of occupational charges to be paid by a tenant suffering an eviction decree the court should see that it is not excessive, fanciful or punitive amount. In that case the amount was fixed with reference to Stamp Duty Ready Reckoner and it was held to be reasonable.

7. Since the delivery of judgment in the case of Atmaram Properties Pvt. Ltd. (supra) it was consistently laid down not only by the Hon'ble Apex Court but also by this Court that after suffering a decree of eviction the tenant may be permitted to occupy the suit premises only on payment of market rent as occupational charges. The contractual rent that too which was prevailing since long cannot be the occupational charges. Again the question of determination of fair rent of the suit premises also does not arise as it was not a cast of fixing rent for a lawful tenant in occupation of a suit premises as a matter of right. The tenant suffering an ejectment decree but desirous to maintain his occupation in the suit premises has to pay the current market rent though the same may be softened by the Court granting order of stay keeping in mind that the suit premises was an old one.

8. In the case in hand admittedly the suit premises is situated on a busy locality where both godowns and residential houses are situated. The suit premises measuring little over 1400 square feet as per petitioner tenant and measuring 1550 square feet as claimed by the landlord is situated on a road having width of about 100 ft. As per valuation report of the suit premises it is found to be worth one crore eighty one lakhs and odd. The suit premises was let out long back. The contractual rent was Rs.363/- per month. Valuation of the real estate and rent rates have sky rocketed since the date of first letting of the suit premises to the petitioner tenant long back. The current market rent of the suit godown as it appears from the reports of the valuer engineer and other materials on record, can be assessed at the rate of Rs.30 per square foot at the minimum. In that case the current market rent comes to around little over Rs.42,000/- per month for area of 1400 square feet and odd and Rs.46,500/- for an area of 1550 square feet. It may further be downed to Rs.40,363/- per month to minimize the impact.

9. I am of the opinion that fixing the current occupational charges at the rate of Rs.40,363/- from the date of passing of the decree on 10th October, 2012 will meet the ends of justice. The eviction decree as well as the execution case being No. 19 of 2013 arising out of said execution decree will stand stayed on condition of depositing by the petitioner tenant occupational charges at the rate of Rs.40,363/- per month from the date of passing of the decree i.e., 10th of October, 2012. The arrear occupational charges for the period from 10th of October, 2012 till 30th of November, 2013 at the above rate less the amount already deposited, if any, should be deposited by the petitioner tenant in the office of the learned Registrar General, Appellate Side, High Court, Calcutta within three months from this date. On depositing said amount learned Registrar General should invest the same in any

short term fixed deposit account of any nationalized bank of his choice and should renew the same from time to time till further order. Similarly, the petitioner tenant shall go on depositing the current occupational charges at the rate of Rs.40,363/- per month by 15th of each succeeding month, the first of which shall be deposited by 15th of January, 2014 for the month of December, 2013 in the office of learned Registrar General, Appellate Side, High Court, Calcutta. The O.P. landlord will not be permitted to withdraw any amount therefrom in excess of the contractual amount i.e., Rs.363/- per month. Learned Registrar General shall also go on depositing an amount of Rs.40,000/- per month from said monthly deposit of Rs.40,363/- in fixed deposit scheme of any nationalized bank of his choice and renewing the same from time to time till further order. Said deposits in excess of the contractual rate of Rs.363/- per month will abide by the result of this second appeal. It is made clear that if the petitioner tenant fails to deposit either the arrear rent or the monthly rents within the time frame as stated above then this order of stay will stand automatically vacated without further reference to this Court. The stay application stands disposed of accordingly.

However, I pass no order as to costs.

Urgent photostat certified copy of this order be supplied to the learned counsels of the parties, if applied for.