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14.07.2021
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**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 336 of 2020

**Somenath Das & Ors.
Vs.
Biswanath Sasmal**

With

C.O. NO. 342 of 2020

**Somenath Das & Ors.
-Vs.-
Smt. Mina Rani Karmakar**

(Via video conference)

Mr. Prantick Ghosh
...for the petitioners

Mr. Prabir Adhya
...for the opposite party in
both the matters

The petitioners in both the revisional applications are decree-holders in respect of eviction suits. The decrees having been obtained *ex parte*, proceedings under Order IX Rule 13 of the Code of Civil Procedure were taken out by the opposite party in each of the cases, in connection with which applications for stay were filed. While granting stay by the impugned orders, the executing court merely directed Rs.10,000/- to be

paid lump sum by the judgment debtors as 'security deposit' as a condition for grant of stay.

Learned counsel appearing for the petitioners contends that, in general, monthly occupation charges are directed to be deposited/paid as a condition precedent of stay orders passed in respect of operation of eviction decrees. Moreover, it is argued that the sum awarded is paltry and not commensurate with the location of the premises-in-question.

Learned counsel appearing for the opposite party in each case argues that there is no hard-and-fast rule as regards the nature of payment directed as a condition of stay. That apart, it is contended that the opposite party in each of the revisional applications are financially weak and do not have the capacity to pay more occupation charges than already directed.

Upon hearing learned counsel for the parties, it is evident that the judgment relied on by the executing court as well as by the petitioners pertained to conditions of stay orders passed in connection with appeals against eviction decrees. In fact, Order XLI Rule 5 of the Code of Civil Procedure, which deals with appeals, specifically confers such power of imposing conditions while

granting stay of eviction decrees. However, such provision is not applicable in terms to an application under Order IX Rule 13 of the Code. However, since the effect of the said order is to stall the execution of the eviction decree obtained by the decree-holders, the executing court was justified in granting Rs.10,000/- an one-time payment as a condition for stay.

However, keeping in view the indigent condition of the opposite parties in each of the revisional applications, this Court does not find any illegality in granting one-time payment of Rs.10,000/-, but, keeping in balance the suffering of the decree-holders due to delay in execution of the eviction decree, the opposite party in each of the revisional applications, bearing C.O. No. 336 of 2020 and C.O. NO. 342 of 2020 respectively, are directed to pay to the petitioners in both the revisional applications an amount of Rs.5,000/- (Rupees Five Thousand only) each within a fortnight from date.

Liberty is granted to the petitioners in both the revisional applications to withdraw the occupation charges of Rs.10,000/-, already deposited by the opposite party in each of the

cases, without prejudice to the rights and contentions of the parties.

The court below is requested to dispose of the miscellaneous cases, arising out of the proceeding under Order IX Rule 13 of the Code of Civil Procedure, as expeditiously as possible, positively within two months from the date of communication of this order to the court below.

In default of payment of Rs.5,000/- in each of the revisional applications, by the opposite parties to the petitioners in each of the cases, directly or through the learned advocates appearing for the petitioners either in this Court or in the court below, the order of stay granted by the impugned order in each of the matters, shall automatically stand vacated without further reference to Court.

With the aforesaid directions, both the revisional applications, bearing C.O. No. 336 of 2020 and C.O. NO. 342 of 2020, are disposed of.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)