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24.08.2021
TN

CO No.341 of 2020
IA No: CAN 1 of 2021

Sri Somenath Das and others
Vs.
Sri Sibumondal

Mr. Prantick Ghosh

.... for the petitioners

Mr. Prabir Adhya

.... for the opposite party

Affidavit-of-service filed in court today be kept
on record.

Re: CAN 1 of 2021

In view of sufficient cause for the absence of the
petitioners on the relevant date having been made out,
CAN 1 of 2021 is allowed, thereby recalling the order
dated July 1, 2021 and restoring CO No.341 of 2020
to its original file and number.

The main revisional application is taken up for
hearing.

Re: CO No.341 of 2020

Learned counsel for the petitioners contends
that the court below acted without jurisdiction in

granting a one-time payment of Rs.10,000/- by the judgment debtor/opposite party as condition for grant of stay of execution of an eviction decree. Such order was passed in connection with a proceeding under Order IX Rule 13 of the Code of Civil Procedure, initiated by the opposite party.

It is contended by learned counsel for the opposite party that the discretion lies with the court to grant occupation charges in whatever form as the trial court deems fit.

There is substance in such submission.

That apart, it appears from the submissions of learned counsel for the opposite party that the judgment debtor/opposite party is a rickshaw-puller by occupation and, as such, keeping in view the modest financial condition of the opposite party, this court finds no scope of interfering with the impugned order, which was passed within the judicial discretion of the court below. However, keeping in balance the suffering of the decree-holder due to delay in the execution of the eviction decree, the opposite party is directed to pay costs of Rs.5,000/- to the petitioners, on condition of payment of which, CO No.341 of 2020 is disposed of without interfering with the impugned order. Such costs shall be paid to the petitioners within a week from date.

The court below shall dispose of the miscellaneous case itself, that is, Miscellaneous Case No.13 of 2019, as expeditiously as possible, along with all pending connected application(s), if any, positively within three months from the date of communication of this order to the court below.

It is made clear that the petitioners will be at liberty to withdraw the amount of Rs.10,000/- deposited pursuant to the impugned order by the opposite party in the court below without prejudice to the rights and contentions of the petitioners, over and above the acceptance of costs of Rs.5,000/- as directed in this order.

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

(Sabyasachi Bhattacharyya, J.)