

02.08.2021
(S/L-19)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 259 of 2021

Sri Rajesh Agarwal & Anr.
-Vs-
Sri Anil Kumar Gupta

Mr. Arijit Bardhan,
Mr. Avirup Chatterjee,
..... For the Petitioners.

Dr. Indrajit Mondal,
Mrs. Priyanka Jana,
.... For the Opposite party.

The decree-holders in a suit for eviction are the petitioners of the present revisional application under Article 227 of the Constitution of India which is directed against the order dated January 25,2021 passed by the 2nd Court of learned Civil Judge(Junior Division) at Sealdah, District 24-Parganas (South) in Ejectment Execution case no. 06 of 2019.

The opposite party has challenged the appellate decree under execution in a Second Appeal being SA 132 of 2019 (SAT 65 of 2019) which is pending before the High Court.

The Division Bench while admitting the said Second Appeal under Order XLI Rule 11 of the Code of Civil Procedure passed an order of stay of all further proceedings of said Execution Case

subject to payment of occupational charges @ 30 per sq.ft. per month calculated from the date of the decree till the month of March 2019 to be deposited before the Executing Court.

The application for review of the said order was dismissed with costs of Rs.10,000/- (Ten Thousand Rupees only).

The Special Leave Petition challenging the aforesaid order of the Division Bench was disposed of by directing the opposite party to pay a sum of Rs. 32,500/- (Thirty two thousand and five hundred rupees) per month commencing from January, 2020.

The petitioners in the said Execution case filed an application for vacating the said order of stay on the ground that the opposite party did not pay the aforesaid amount in terms of the order of the Hon'ble Supreme Court.

The grievance of the petitioners is that the Executing Court by the order impugned instead of vacating the said order of stay has stayed the further proceedings of the said Execution Case till the disposal of the said Second Appeal.

On perusal of the record it appears that there are some defaults in regular payment of the said amount.

Mr. Mondal, learned counsel appearing on behalf of the opposite party submits that the said

defaults occurred due to the prevailing COVID-19 situation.

On enquiry, Mr. Bardhan, learned counsel for the petitioner, on instruction submits that there is no further default at present.

In view of the prevailing Covid-19 situation, the defaults in payment of the said amount are not intentional per se, therefore the Executing Court has not committed any error in refusing the prayer of the petitioner for vacating the said order of stay.

The order impugned, for the aforesaid reasons does not call for any interference.

The opposite party, however, is directed to take appropriate steps for expeditious disposal of the said Second Appeal.

C.O. 259 of 2021 is disposed of with the above observations without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)