

(02)
03.03.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO No. 328 of 2021

Madhu Chourasia & ors.

-versus-

Raja Shah & anr.

Mr. Probal Kumar Mukherjee,
Mr. Suhrid Sur,
... for the petitioners.

Mr. S.P. Mukherjee,
Mr. Debanjan Mukherjee,
... for the opposite party no. 1.

The opposite party no. 1, being one of the judgment-debtors of the decree of eviction passed in Ejectment Suit No. 215 of 2007 by the learned Civil Judge (Junior Division), 3rd Court at Alipore has preferred the connected Ejectment Appeal No. 51 of 2019.

The appeal Court below by the order impugned being order no. 5 dated December 19, 2019 has allowed an application filed by the opposite party no. 1 for stay of operation of the decree under appeal.

The petitioners/decreed-holders are aggrieved by the said order since no condition has been imposed in granting such stay.

It appears from the order impugned that the only consideration which persuaded the appeal Court below to pass the said order of stay is that the appellant/tenant did not pay

rent since 1985 but it is only in the year 2007 the plaintiffs/decreed-holders filed the suit for ejectment.

The said consideration is not at all relevant consideration for grant of stay of operation of the decree pending an appeal against the said decree.

Mr. S.P. Mukherjee, learned Senior Counsel appearing on behalf of the opposite party no. 1, submits that his client is possessing the suit property on the strength of an independent agreement for sale.

Mr. Probal Kumar Mukherjee learned senior advocate appearing on behalf of the petitioners strongly disputes such submission of Mr. S.P. Mukherjee.

Be that as it may, the application for stay has been disposed of on the basis of an irrelevant consideration as such the said application is required to be decided afresh.

The order impugned is set aside. C.O. 328 of 2021 is disposed of with a direction upon the learned Additional District Judge, Fast Track Court-II at Alipore, District : 24 Parganas (South) where the connected appeal is now pending to dispose of the said application afresh in accordance with law.

The parties are at liberty to adduce documentary evidences in support of their respective claims.

The appeal Court below is requested to make all endeavour to dispose of the said application within the period of six weeks from the date of communication of this order and

in doing so shall not grant any unnecessary adjournment to either of the parties.

It is made clear that this Court has not gone either into the merit of the said application or into the merit of the claims and counter-claims of the parties.

There shall be no order as to costs.

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

(Biswajit Basu, J.)