

13.04.2021
(S/L-31)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 339 of 2021
With
IA No. CAN 1 of 2021 (**Is not in file**)

Sri Shyam Sundar Mittal
-Vs-
Shri Santosh Kumar Banerjee & Anr.

Mr. Bratin Kumar Dey,
Mr. Arun Goswami,
Mr. Pradeep Pandey,
..... For the Petitioner.

Mr. Tapash Kumar Bhattacharya,
Mr. Monish Banerjee,
..... For the Opposite parties.

Affidavit-of-service filed on behalf of the
petitioner in Court today be kept with the record.

The petitioner has suffered a decree of eviction in
Title Suit No.31 of 2016 and aggrieved by the said
decree have preferred the connected Title Appeal No.
149 of 2019 which is now pending before the 9th
Court of Additional District Judge at Alipore.

The Appeal Court below by the order no. 14
dated January 28, 2021 has disposed of an
application for stay filed by the petitioner in the said
appeal by fixing the occupation charges at the rate of
Rs.50,000/- per month as the condition for grant of
stay of the execution case levied to execute the
decree under appeal.

The petitioner complains that the assessment of
occupation charges at the said rate is based wholly
on a report submitted by one Sri Banibrata

Mukherjee, BE, MBA but no copy of the said document was served upon the petitioner.

Mr. Tapash Kumar Bhattacharya, learned advocate appearing on behalf of the decree-holders/opposite parties could not substantiate service of the said report upon the petitioner.

Assessment of occupation charges on the basis of the said document without affording an opportunity to the petitioner even to look into it is not justified.

The order impugned for the aforesaid reason is not sustainable and is accordingly set aside.

The Appeal court below is directed to decide the said application for stay afresh.

The decree-holder/opposite party shall supply a copy of the aforementioned report to the petitioner in course of this day.

The Appeal Court below is requested to dispose of the said application within four weeks from the date of communication of this order without grating any unnecessary to either of the parties.

It is made clear that this Court has not gone into the veracity of the said report.

C.O. 339 of 2021 is, thus, disposed of without any order as to costs.

The connected application being IA No. CAN 1 of 2021 is disposed of accordingly.

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.)