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Ct. 18
11.11.2021

**C.O. No. 515 of 2021
(Via Video Conference)**

Ramkrishna Das

Vs.

**Shyamsundar Das, since deceased his legal heirs
and representatives - Smt. Jayanti Das & Ors.**

Mr. Sudip Das ... For the petitioner.

Mr. Soumo Chaudhury
... For the O.P. Nos. 1(a), 1(b), 1(c), 2 & 3.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for recovery of possession and is directed against the Order No. 72 dated September 09, 2019 passed by the learned Additional District Judge at Chandernagore, District – Hooghly in Title Appeal No. 168 of 2007.

The eviction suit filed by the petitioner was decreed on May 31, 2007. The opposite party nos. 1, 2 and 3 have preferred the connected Title Appeal and the appeal Court by the order impugned has stayed all further proceedings of the execution case levied to execute the decree under appeal.

Mr. Sudip Das, learned advocate appearing on behalf of the petitioner submits that the appeal Court is not justified in staying the further proceedings of the said execution case without imposing any condition upon the judgement debtors/appellants.

The law is now well-settled that the judgment debtors cannot enjoy a blanket stay of an eviction decree pending disposal of an appeal against the said decree.

The appeal Court below by the order impugned since has stayed the execution case without putting the judgment-debtors/appellants under any terms; the said order is not sustainable and is accordingly set aside.

The 'Ga -1' schedule property is a 2½ khata of land at Chandernagore, Hooghly. The occupation charge of the suit property therefore cannot be less than Rs. 1,000/- per month, as such, the occupation charge in respect of the said property is fixed at the aforesaid rate payable according to English calendar month from the date of decree.

The judgment debtors/appellants are required to pay the monthly occupation charges to the decree-holder within 7th of each succeeding month for which it falls due and the arrear occupation charge is to be liquidated by six equal monthly installments, first of such installments is required to be paid by December 31, 2021 along with the current occupation charge.

There shall be an unconditional stay of all further proceedings of the Title Execution Case No. 82 of 2015 pending before the 1st Court of learned Civil Judge, (Junior Division) at Chandernagore, District – Hooghly till the end of the month of December, 2021.

In default of any of the payments in terms of the direction above, the stay hereby granted would automatically be vacated and the said decree would be executable at once.

It is however made clear that in the event the judgment-debtors are successful in their appeal, the plaintiff/decreed-holder is liable to return the occupation charges received by him under this order.

The appeal Court below is requested to dispose of the appeal in accordance with law as expeditiously as possible, preferably within a period of eight available working months of the said Court from the date of communication of this order and in doing so, the appeal Court below shall not grant any unnecessary adjournment to either of the parties.

C.O. 515 of 2021 is disposed of with the above terms 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.)