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SK
Ct. No. 18
04.01.2021

**C.O. No. 942 of 2020
(Via Video Conference)**

**Sri Rabindra Nath Kundu & Ors.
Vs.
Iftekhar Ahmed**

Mr. Siva Prasad Ghose,
Ms. Debjani Ghosh Roy (Deb) ... For the petitioners.

Mr. Gopal Chandra Ghosh... For the opposite parties.

The plaintiffs in a suit for eviction are the petitioners of the instant application under Article 227 of the Constitution of India. The eviction suit being Title Suit No. 9 of 2005 was initially decreed on May 31, 2016.

The decree was set aside in appeal and the suit was remanded back to the trial Court for a fresh decision. The suit was again decreed on February 11, 2019 and the connected appeal is taken out by the defendant/opposite party against the said decree being Title Appeal No. 08 of 2019, the appeal is now pending before the learned Additional District Judge, Fast Track Court No. 2, Barrackpore, District 24 Parganas (North).

The appeal Court below by the order impugned being Order dated March 16, 2019 has allowed an application for stay filed by the defendant/opposite party without imposing any condition.

The appeal Court below has exercised jurisdiction not vested in him in allowing the prayer of the appellant/opposite party for stay of operation of the

decree under appeal without imposing any condition as such the order impugned is set aside.

The appeal Court below is requested to decide the application for stay afresh in accordance with law.

It is made clear I have not gone into the merit of the rival contentions of the parties. It is for the learned appeal Court below to decide the said application on merit.

C.O. 942 of 2020 is allowed.

No order as to costs.

The appeal Court below shall make all endeavour to dispose of the said application for stay within a period of four weeks from the date of communication of this order without granting any unnecessary adjournment to either of the parties and after disposal of the said application the appeal Court shall make all endeavour to dispose of the appeal expeditiously.

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.)