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Ct. No. 18
08.03.2021

**C.O. No. 550 of 2021
(Via Video Conference)**

**Sri Shyam Das
Vs.
Sri Ram Das**

Mr. Aniruddha Chatterjee,
Mr. Iftekar Munshi ... For the petitioner.

Mr. Kushal Chatterjee,
Mr. Abir Lal Chakraborti ... For the opposite party.

The petitioner has suffered an ex parte decree of eviction passed in Title Suit No. 79 of 2014. The petitioner has filed an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the said ex parte decree which has been registered before the learned Civil Judge, (Junior Division), at Bidhannagar being Misc. Case No. 07 of 2019.

The said ex parte decree when put into execution gives rise to connected Title Execution Case No. 02 of 2018. The executing Court by the order dated August 17, 2019 directed the petitioner to deposit a sum of Rs. 35,000/- within 15 days from the date of the said order as the condition for stay all further proceedings of the said execution case.

The decree-holder/opposite party assailed the said order in C.O. 2997 of 2019. The said revisional application was disposed of on November 25, 2019 with the following observations :-

“Accordingly, the impugned order is set aside. Misc. Case No. 7 of 2019 shall be positively disposed of by December 31, 2019 whereafter the execution case will continue in accordance with law. Till December 31, 2019 the possession and occupation of the opposite party shall not be disturbed. For this the opposite party shall pay a consolidated sum of Rs. 50,000/- each for the month of November and month of December, 2019 as occupation charges. In default this indulgence shown to the opposite party protecting his possession shall lapse and the decree shall be executed at once. Rs. 65,000/- which has been deposited by the opposite party under order of the court as above, may be adjusted with the sums aforesaid being Rs. 50,000/- for each month for two months.”

The petitioner complied with the aforesaid order by depositing Rs. 50,000/- for the months of November, 2019 and December, 2019.

The Misc. Case No. 07 of 2019 was not disposed of within December 31, 2019 as directed by the aforesaid order dated November 25, 2019.

The decree-holder/opposite party in the execution case filed applications one for issuance for fresh writ of possession and another for breaking open the padlock of the suit property on the ground that after December 31, 2019 there is no order staying the further proceeding of the said execution case.

The executing Court by the order February 11, 2021 allowed the said prayers of the decree-holder/opposite party.

The petitioner thereafter filed an application under Section 151 of the Code seeking recall of the said order dated February 11, 2021. The executing Court by the order dated March 02, 2021 has dismissed the said application.

The judgment-debtor is challenging the aforesaid two orders in the present application under Article 227 of the Constitution of India.

Mr. Aniruddha Chatterjee learned advocate appearing on behalf of the petitioner submits that neither the application for issuance of fresh writ of possession nor the application for breaking open the padlock of the suit property were ever served upon his client. He further submits that his client has complied with the condition of the order dated November 25, 2019 passed in C.O 2997 of 2019 but the misc. case was not disposed of within the time fixed by the said order for which his client is not responsible.

Mr. Kushal Chatterjee learned advocate for the decree-holder/opposite party on the other hand submits that condition of payment of Rs. 50,000/- was made for two months only with the expectation that the misc. case would be disposed of within December 31, 2019 but the same has not been disposed of and is still pending, the petitioner is not entitled to enjoy blanket

order of stay of the further proceeding of the execution case pending disposal of the said misc. case.

Heard learned advocate for the parties, perused the materials on record.

The decree under execution is a decree of eviction of licensee, the decree-holder and the judgment-debtor are full blood brothers. The condition of payment of Rs. 50,000/- for two months was undoubtedly imposed with the hope and trust that the connected misc. case would be disposed of within the said two months but the said misc. case did not proceed in the manner as desired. The question who is responsible for the delay in disposal of the said misc. case is no more relevant now as the normal functioning of the Court was disrupted due to Covid-19 pandemic.

Be that as it may, the petitioner cannot arrest the further progress of the execution case merely on the ground of pendency of the said misc. case, he must be put to terms to enjoy such an order of stay.

The order dated February 11, 2021 passed by the learned Civil Judge (Junior Division) Bidhannagar in Title Execution Case No. 02 of 2018 is set aside.

In view of setting aside of the said order dated February 11, 2021 challenge to the order dated March 02, 2021 dismissing the application of the petitioner for recall of the order dated February 11, 2021 has become infructuous.

However, the opposite party is directed to serve the copy of the applications filed by him for issuance of fresh writ of delivery of possession and for breaking open the padlock of the suit property upon the petitioner within two weeks from date.

The petitioner shall deposit a sum of Rs. 1,00,000/- in the executing Court by two equal instalments on or before April 30, 2021. First of such instalment shall be deposited by March 31, 2021.

There shall be unconditional stay of all further proceedings of connected Title Execution Case No. 02 of 2018 till April 30, 2021.

In the event the aforesaid deposits are made within the time stipulated hereinabove the said stay shall continue till the disposal of the Misc. Case No. 07 of 2019, in default of compliance of any of the conditions mentioned above the stay hereby granted shall stand automatically vacated and the decree will be executable at once.

The learned Civil Judge (Junior Division) Bidhannagar is requested to dispose of the said Misc. Case No. 07 of 2019 within May 31, 2021 and in doing so shall not grant any unnecessary adjournment to either of the parties.

In the event the Misc. Case No. 07 of 2019 is not disposed of within May 31, 2021 the petitioner is required to deposit with the executing Court a sum of Rs. 25,000/- per month within 7th of each succeeding

month for which it falls due to enjoy the order of stay hereby granted till the disposal of the said misc. case.

C.O. 550 of 2021 is disposed of with the above terms.

No 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.)