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SK
Ct. No. 18
06.01.2021

**C.O. No. 1011 of 2020
(Via Video Conference)**

**Shibu Kumar Shaw & Ors.
Vs.
Naresh Sharma**

Mr. Sharanya Chatterjee,
Mr. Neil Basu ... For the petitioners.

The revisional application is taken up for hearing.

Affidavit of service filed in Court today be kept with the record.

None appears either virtually or physically to oppose the application in spite of service.

The petitioners being the plaintiffs of Title Suit No. 382 of 1996 were successful in obtaining a decree of eviction against their tenant, namely Jogeswar Sharma.

The said decree was put into execution giving rise to Title Execution Case No. 4 of 1997 before the 3rd Court of learned Civil Judge, (Junior Division), at Alipore, District 24 Parganas (South).

The opposite party in the said execution case filed an application inviting the executing Court to determine his alleged independent right, title and interest over the suit property under Rule 101 of Order XXI of the Code of Civil Procedure which has

been registered before the executing Court as Misc. Case No. 35 of 2006.

The pendency of the said misc. case since is arresting the progress of the connected execution case the petitioners in the said miscellaneous case filed an application for occupational charges.

The executing Court by the order impugned has dismissed the said application holding that the opposite party not being a tenant is under no obligation to pay occupational charges.

Apart from tenant the execution of a decree of recovery of possession of immovable property can be resisted by a person claiming his alleged independent right, title and interest over the decretal property. The said person pending adjudication of his such right is primarily liable to pay charges to retain his occupation over the said property.

The liability of payment of charge in lieu of such occupation ofcourse depends upon the prima facie gravity of the right sought to be established.

It is therefore preposterous to suggest that liability to pay occupational charges is attached only with a judgment-debtor/tenant.

The executing Court, therefore, has dismissed the application filed by the petitioners for occupational charges on an erroneous premise.

The order impugned for the above reason is not sustainable and is accordingly set aside. The executing Court is directed to decide the application filed by the petitioners for fixation of the occupational charges afresh in accordance with law.

The executing Court is requested to dispose of the said application expeditiously preferably within a period of six weeks from the date of communication of this order and to adhere to the time limit fixed by this Court for disposal of the said application shall not entertain prayer of either of the parties for any unnecessary adjournment.

The misc. case is pending since 2006, the executing Court is therefore further requested to make all endeavour to dispose of the said misc. case expeditiously.

C.O. 1011 of 2020 is allowed 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.)