

22.03.2021
(S/L-03)
Ct.-18
(Susanta)

(Via Video Conference)

CO 673 of 2021
Smt. Shankuntala Devi
-Vs-
Sri Ranjit Paul & Ors.

Mr. Prabal Mukherjee,
Ms. Shebatee Dutta,
..... For the Petitioner.

Mr. Pinaki Ranjan Mitra,
..... For the Opposite Parties.

The present application under Article 227 of the Constitution of India is directed against order No. 24 dated March 08, 2021 passed by the 4th Court of learned Civil Judge (Junior Division), Howrah in Misc. Case No. 25 of 2021.

The opposite parties filed a suit being Title Suit No. 80 of 2008 in the 4th Court of Learned Civil Judge (Junior Division), Howrah for eviction of one Lalan Mishra from the suit rooms described under schedule 'A' and under schedule 'B' appended to the plaint of the said suit.

The said suit was decreed ex parte.

The said decree when put into execution gives rise to Title Execution Case no. 19 of 2017.

The petitioner in the said Execution Case filed an application under Order XXI Rules 97 and 98 of the Code of Civil Procedure for determination of her independent right of tenancy in respect of 8 rooms at the ground floor of the suit premises.

The said application has been registered before the Executing Court as Misc. Case no. 25 of 2021.

The prayer of the petitioner for stay of the Execution case pending disposal of the said Misc. case has been refused by the order impugned herein.

The Executing Court to investigate the *prima facie* possession of the petitioner over the suit property has considered the documents filed by the petitioner such as rent receipts for the years 1975, 1976 and 1977 and held that those rent receipts do not stand in the name of the husband of the petitioner alone, it has further been held that the husband of the petitioner did not pay any rent in terms of the tenancy agreement of 1998. The possession of the petitioner over the suit property was disbelieved since the process server found that the suit property was under lock and key and the petitioner was not present there.

The aforementioned investigations are completely irrelevant at the time of consideration of an application for stay of the connected execution case during the pendency of the said Misc. Case, what is relevant at the said stage is the investigation to ascertain the condition for grant of such stay as prayed for.

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

The Executing Court is directed to decide the said application for stay afresh in accordance with law.

The Executing Court is requested to dispose the said application for stay within a period of three weeks from the date of communication of this order

and in doing so shall not grant any unnecessary adjournment to either of the parties.

The parties are at liberty to bring evidences on record necessary for assessment of the appropriate occupational charges.

Mr. Mitra, Learned Counsel appearing on behalf of the decree-holders submits that if the petitioner does not unnecessarily cause delay in disposal of the stay application his client will not insist upon delivery of possession of the decretal property in the execution case for the aforesaid period of three weeks.

C.O 673 of 2021 is disposed of with the above terms. There shall be 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.)