

7th July,
2021
(AK)
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C.O 1154 of 2021

(Via Video Conference)

Sri Sachchidananda Dutta Gupta
Vs.
Sri Tapan Dutta Gupta

Mr. Amitava Mitra
Mr. Debjit Mukherjee
Mr. Paritosh Sinha
Ms. Sayani Bhattacharya
...For the Petitioner.

Despite service, none appears for the opposite party.

Affidavit-of-service filed in court today be kept on record.

The challenge of the petitioner is restricted to the refusal of the petitioner's prayer for a direction upon the defendant/opposite party to pay occupation charges for residence in the flats-in-question since, as per the petitioner's contention, the opposite party is an illegal trespasser in respect of the suit property.

However, the bone of contention in the suit itself revolves around the question of the respective titles of the parties in respect of the suit property.

As such, there is no scope for the trial court to grant occupation charges on a stand-alone footing, unless

the same is granted as a condition for stay as envisaged in Order XLI Rule 5 of the Code of Civil Procedure.

Hence, the court below was justified in refusing the independent prayer for occupation charges.

However, the ends of justice demand that the suit is disposed of as expeditiously as possible, keeping in view the present pandemic circumstances and the difficulties being faced by the District courts due to their staggered functioning.

Accordingly, C.O. 1154 of 2021 is disposed of without interfering with the impugned order but requesting the Civil Judge (Senior Division) Fifth Court at Alipore to dispose of Title Suit No.123 of 2015, pending in the said court, along with all applications in connection therewith, if pending, within one year from the date of communication of this order to the court below.

The petitioner shall communicate this order, along with a server copy of the order, to the opposite party and/or the learned advocate-on-record for the opposite party appearing in the court below as well as on the trial court to facilitate due compliance.

It is, however, made clear that the observations made in the order impugned herein shall be treated to be tentative, only for the purpose of deciding the application for occupation charges and the trial court shall proceed with the hearing of the suit and connected applications

without being influenced in any manner by any of the observations made in the impugned order.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)