

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 1204 of 2021

(Via video conference)

**Krishna Prasad Mukherjee & Ors.
-Vs.-
Rabindra Nath Chatterjee & Ors.**

Mr. Tanmoy Mukherjee,
...for the petitioners

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

Despite service, none appears on behalf of
the opposite parties. Hence, the matter is taken
up for hearing ex parte.

It appears from the conduct of the parties,
as made out in the application under Article 227
of the Constitution of India as well as its
annexures, that the opposite parties are habitual
defaulters and have a tendency to protract
litigation. Initially an eviction suit was filed by
the present petitioners on various grounds and
was decreed finally. Subsequently, when the
petitioners levied execution, the opposite parties
took out an application under Order IX Rule 13 of

the Code of Civil Procedure, since the eviction decree had been passed *ex parte*. In such application, the opposite parties lost up to this Court. Thereafter, as a further dilatory ploy, the opposite parties took out an application under Section 47 of the Code of Civil Procedure, which also ended in dismissal.

After a long gap of eight years from the decree, a title appeal was preferred against the parent decree along with an application for condonation of delay. Ultimately, since a point was taken that some of the defendants had expired during pendency of the title appeal, the second appellate court, vide order dated December 19, 2013, remanded the appeal along with its connected application back to the first appellate court. In the said order, as annexed at page 16 of the instant revisional application, a sum of Rs.1,500/- per month was decided as occupation charges to be paid by the opposite parties on and from January, 2014 and, thereafter, on 7th day of each following English calendar month until further orders. The respondents therein, that is, the present petitioners, were given liberty to accept the occupation charges without prejudice to their

rights and contentions in the pending appeal. The appellants were also directed to pay all arrear occupation charges calculated till December 2013, positively by January 07, 2014.

There was a specific default clause in the said order of the Division Bench, by which the appeal was remanded to the first appellate court, that in default of payment of any of the aforesaid sums or any future occupation charges, the said order would stand recalled and the appeal would stand dismissed.

As such, it is evident from the Division Bench order of this Court that no further reference to court was necessary in case of default.

Thereafter, the opposite parties having committed a gross default in not paying the occupation charges on and from the month of March 2019 till January, 2021, the petitioners took out an application before the first appellate court for dismissal of the title appeal pursuant to the default clause in the order of the Division Bench. However, the said application has been unnecessarily kept pending, as reflected in the impugned order, bearing Order No. 93, dated

February 26, 2021, on the frivolous ground that the lower court records have not yet arrived.

It is beyond contemplation as to how the lower court records will be relevant in deciding the interlocutory application of the petitioners asking for dismissal of the title appeal-in-question, since the order of this Court as well as proof of clearance of the alleged defaulted amount would be sufficient to decide such application. Hence, the court below failed to exercise jurisdiction vested in it by law in inordinately delaying the hearing of the title appeal on the irrelevant ground of non-arrival of the lower court records.

Accordingly, C.O. No. 1204 of 2021 is disposed of by directing the Additional District Judge, Fast Track Court-III at Howrah, District-Howrah, to dispose of the application for dismissal of Title Appeal No. 207 of 2008, pending in the said court, as expeditiously as possible, without waiting unnecessarily for the arrival of the lower court records. Such application shall be disposed of by the learned Additional District Judge positively within three weeks from the date of communication of this order to the said court.

The court below shall act on the communication of the learned advocates of the parties, along with a server copy of this order, without insisting upon prior production of a certified copy thereof.

The petitioners shall intimate this order to the court below as well as to the opposite parties and/or to the learned advocate(s) for the opposite parties in the court below at the earliest.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)