

AD. 16.
July 27, 2021.
MNS.

C. O. No. 1276 of 2021
(Via video conference)

M/s. Special Steel & Wire Wings
Vs.
Sri Radhe Shyam Bhootra and others

Mr. Gopal Chandra Ghosh,
Mr. Gautam Das,
Mr. Probal Das

... for the petitioner.

Mr. Probal Kumar Mukherjee,
Mr. Tarak Nath Halder

...for the opposite parties.

Learned counsel appearing for the petitioner contends that the appellate court acted without jurisdiction in ascertaining the occupation charges at the rate of Rs.2,00,000/- (Rupees two lac) only per month as a condition for grant of stay of an eviction decree, without granting appropriate opportunity to the appellant-petitioner to furnish appropriate documents or give a reply to the written objection to their said application, which was filed on the date of hearing itself by the respondents/landlords.

Learned senior counsel appearing for the opposite parties contends that there is no

reflection in the impugned order that any such prayer, seeking opportunity of filing a reply or producing other documents, was made by the revisionist petitioner before the appellate court. That apart, learned senior counsel argues that even the revisional application does not contain any averment to the effect that such an opportunity was sought for, but refused by the appellate court.

However, it appears from the impugned order that the appellate court, even without any specific leave being sought for filing a reply, ought to have granted an opportunity to the petitioner to file a short reply, along with relevant documents, in support of the controversy raised by them regarding the alleged occupation charges.

As far as the occupation charge is concerned, the written objection is, for all practical purposes, the first pleading and at least one opportunity ought to have been given to the revisionist-petitioner to file a reply and relevant documents controverting such opposition.

However, it also has to be kept in mind that the appellate court did not rely on mere conjecture but on specific documents to arrive at

the findings as given in the impugned order and, as such, the appellate court cannot be faulted for proceeding merely on the basis of surmise.

Keeping the absence of any opportunity to the revisionist petitioner, to file a reply, in balance with the harassment caused to the opposite parties due to the delay involved, C. O. No. 1276 of 2021 is disposed of by setting aside the impugned order, bearing order no. 4 dated March 22, 2021 passed by the Additional District Judge, First Court at Sealdah, in Ejectment Appeal No. 2 of 2021 and directing the Additional District Judge, First Court at Sealdah to dispose of the application for stay filed by the revisionist petitioner and assess the occupation charges upon granting an opportunity to the revisionist petitioner to file a reply to the written objection filed by the opposite parties, annexing relevant documents on which the petitioner wants to rely, if any.

Such reply shall be filed within a period of a week from date in the appellate court below. The appellate court shall, thereafter, dispose of the stay application and the revisit the quantum of occupation charges afresh by August 13, 2021

upon giving an opportunity of hearing to both sides.

Such order is subject to payment of costs of Rs.50,000/- (Rupees fifty thousand) only by the petitioner to the opposite parties, directly or through the learned advocates for the parties, also within a week from date.

In default of such payment, this order shall stand automatically vacated without further reference to court.

It is made clear that the merits of the stay application, occupation charges to be fixed and/or the title appeal itself have not been gone into by this Court and the appellate court shall be free to decide all such matters independently in accordance with law.

The appellate court is requested to dispose of the appeal itself, bearing Ejectment Appeal No. 2 of 2021, at the earliest thereafter, positively within three months from the disposal of the stay application.

The appellate court as well as the parties shall act on the written communication of the learned advocates for the parties accompanied by a server copy of this order without insisting upon prior production of the certified copy thereof.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)