

24.12.2021
Ct. 21
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C.O. 2245 of 2021
(Via Video Conference)

Gopi Kishan Jhunjhunwala & Anr.

-Vs-

M/s. Kusum Agency & Anr.

Mr. Anindaya Chatterjee,
Mr. Vikash Baisya,
Mr. Saptarshi Kumar Mal,

... for the petitioners

Ms. Manju Agarwal,
Mr. Bajrang Manot,

... for the opposite parties

Being aggrieved by the interim order of stay of Ejectment Execution Case No. 140 of 2016 for a period of three weeks or till final hearing of the application for stay on 04.01.2022 in Misc. Appeal Case No. 62 of 2021 by Chief Judge, City Civil Court at Calcutta, the plaintiffs/landlords have filed the present application under Article 227 of the Constitution of India.

The present case has long chequered history, the present petitioners being the plaintiffs have initiated an ejectment suit against the defendant a mercantile firm in the year 2012(Ejectment Suit no.519 of 2012) and has been successful in obtaining a decree of eviction against the defendant firm on 08.09.2016 and filed an Ejectment execution case being no.140 of 2016. Then

troubles started for plaintiffs/the decree holders to get the decree executed.

First, the defendant/Judgement Debtor preferred Title Appeal being no.27 of 2017, challenging the decree and obtained an interim order of stay of the decree, but on payment of occupational charge of Rs. 25,000/- per month.

Being aggrieved by order of payment of occupational charge defendant/ tenant filed C.O. No.48 of 2018 before the Hon'ble High Court and which was disposed of with the findings the defendant had already paid arrear occupational charges on 02.01.2019. However, the Hon'ble High Court directed learned court below to dispose of the Stay application within the month of February 2019.

Then at the time of final hearing of stay petition filed by the defendant and confirming interim stay of the eviction decree, the learned Appellate Court was pleased to enhance the occupational charge from Rs.25,000/- to Rs.40,000/- per month.

Challenging such order the defendant once again moved Hon'ble High Court and filed C.O. no.1071 of 2019. The Hon'ble High Court was pleased to uphold the order of the Appellate Court and dismisses the Application under Article 227 of the Constitution of India on 27.02.20.

The defendant did not bother to comply either the order of the Appellate Court or that of the Hon'ble High Court and failed to pay the occupational charge at enhance rate of Rs. 40,000/-. Taking into consideration such conduct and attitude of the defendant/judgement debtor, the learned Appellate Court was pleased to set aside and vacate the stay order granted in favour of the defendant tenant.

Then after, plaintiffs/petitioners have put the decree into execution but due to resistance and obstruction put by the defendant and its men, the bailiff of the court could not execute the decree. Then, the plaintiffs/decreed holders have prayed for police help by filling a petition under Order 21 Rule 97 Civil Procedure Code (Misc. Case no.18 of 2017) and which was allowed.

Challenging the order of granting police help for execution of the decree, the defendant again moved the Hon'ble High Court by filing C.O.no.2021 of 2021 and this court dismissed the application under Article 227 of the Constitution of India, on the point of maintainability as order impugned being a deemed decree no Revision lies.

In the meantime learned executing court proceeded with execution and date for execution of the decree with police help was fixed on 17.12.2021.

On the other hand the defendant after dismissal of C.O. no.2021 of 2021 on 01.12.2021 has preferred Misc. Appeal No.62 of 2021, challenging the order passed by Learned Executing Court under Order 21 Rule 97 CPC. In such Appeal the judgement debtor has obtained the impugned interim order of stay on 15.12.2021.

This Court finds the plea which the Jdr. had taken before the lower Court for stay of the Execution Proceeding was pleaded before this Court at the time of hearing of C.O. 2021 of 2021 and this Court in its order dated 01.12.2021 had discussed in details the plea taken by the Jdr. and pleased to observe Jdr. by adopting different means has been trying to delay the execution proceeding. It has also been observed that Jdr. has failed to pay occupational charges awarded by the Appellate Court while staying the decree of eviction passed against the defendant and for which the learned Appellate Court was compelled to set aside the stay order. While hearing the petition under Order 21 Rule 97 Civil Procedure Code the defendant appears to be very irregular in putting appearance before the Executing Court. Such proceeding was proceeded exparte against the defendant/Jdr, but learned executing court had allowed the defendant/Jdr. to cross examine witnesses of the Decree Holders. That after completion of the evidence from the side of the

petitioner /Dhr., the defendant/Jdr. was given an opportunity to adduce evidence, but it did not bother to adduce any evidence in its defence and permitted the Executing Court to fix the case for argument. When the case was fixed for argument it had come with a petition seeking leave to adduce evidence and which the learned executing court was pleased to reject. Then to delay the execution proceeding it has filed C.O. No. 2021 of 2021 alleging it was not given opportunity to adduce evidence and which this Court held to be baseless. Such facts discussed above show conduct of the defendant to be malafide to cause inordinate delay in execution of the decree of its eviction from disputed tenancy by adopting different means.

Be that as it may, let see whether the impugned order suffers from any illegality or material irregularity?

It is settled law the Appeal court has discretion to grant a stay keeping in view all facts and circumstances of the case, including the manner in which the trial of the suit was conducted and the impugned decree was passed. The stay should be granted on sufficient cause and reason and if it is satisfied that the application was made without undue delay and applicant incur significant damages until order of stay is made.

The order under challenge appears to be an interim order of stay for limited period and appears to have been passed after hearing the learned counsels for

both sides taking into consideration the submission of the Appellant's lawyer that police are going to execute the decree on 17.12.2021 and without entering into the merits of the matter keeping the same open for further hearing on the point of law and facts after receiving the record from the learned trial court on 04.01.2022. So, it is seen just to prevent the execution by police on 17.12.20 and until full hearing of the stay application on law and facts, the interim order of stay has been passed by the learned Appellate Court.

Therefore, this court is of view an order interim in nature or which has not finally decide the *lis* cannot be challenged by filing an application under Article 227 of the Constitution. The right of the plaintiffs/ decree holders to place their submission against the stay application filed by the judgment debtor before the learned Appellant Court is still subsisting and open and not yet closed. The decree holders have hastily rushed before this court before the fate of stay application is decided by learned Appellant Court.

Therefore, this court holds impugned order does not suffer from any infirmities and does not call for any interference.

Accordingly, revisional application being **C.O. No. 2245 of 2021 is dismissed.**

Interim order, if any, stands discharged.

However, the learned court below is requested to dispose of the Appeal as expeditiously as possible giving preference by fixing short dates and without giving adjournments to either of the parties without reasonable cause.

In view of the order made above affidavits are not invited. Allegations made shall be deemed be denied.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)