

04.01.2021

Court No. 02
Item No. DL – 10
nandy

(Appeal Admitted)

SAT 377 of 2019
with
CAN 11565 of 2019

Namita Dey & Ors.
Vs.
Kabita Dutta & Anr.

Mr. Partha Pratim Roy, Advocate
Mr. Anirban Das, Advocate

.....for the Plaintiffs/Appellants

Mr. Susenjit Banik, Advocate
Mr. Suparno Ghosh, Advocate
Mr. Amit Singh, Advocate

.....for the Defendant/Respondent

The appeal shall be heard on the following substantial questions of law:-

- i) Whether the a lessee of a long term duration can be regarded as a owner for the purpose of Section 13(1)ff of the West Bengal Premises Tenancy Act, 1956 when he himself admits that he has to deliver up possession of the demised premises upon expiration of the term.
- ii) Whether the findings of both the Courts below are justified in relation to the status of the plaintiff/respondent who is the long-term leaseholder, when admittedly the property is not comprised in a cooperative society.

Let the Lower Court Record be called for by Special Messenger at the cost of the respondent. Such cost shall be put in within a week from date.

Immediately upon deposit of such cost, the Office shall bring the Lower Court Record by Special Messenger. After arrival of the LCR, the department shall examine the same and if found complete, shall put an endorsement in

this regard. The department shall ensure that the LCR arrives to this court within three weeks from the date of deposit of the Special Messenger Cost.

The respondent shall prepare eight copies of informal paper books – printed, typewritten or cyclostyled, as the case may be – out of court, within a period of four weeks from date. All other formalities relating to preparation of Paper books are dispensed with.

It goes without saying that before filing the Paper Books the respondent shall serve a copy of the same upon the learned Advocate-on-record of the appellants and the endorsement in this regard shall accompany the filing of the Paper Books.

Since the respondent has appeared, the learned Advocate waives the service of notice of appeal upon the respondent. The learned Advocate for the respondent submits that the Vakalatnama duly executed by the respondent after taking 'no objection certificate' from the erstwhile Advocate is in his possession but the same is on a demi paper.

As a special case we permitted the learned Advocate-on-record of the respondent to file the said Vakalatnama in course of this day which in fact, has been filed vide filing no. A-75.

Upon completion of all formalities, parties are at liberty to mention for inclusion of the appeal for final disposal.

CAN 1 of 2019
(Old No. CAN 11565 of 2019)

By consent of the parties the application for stay has been taken up today.

The defendants/appellants have suffered a decree of eviction on the ground of reasonable requirement and is occupying the suit premises on a meagre rent of Rs.50/- per month. It fell in course of argument that the suit premises comprised of 115 sq.ft. area and is used for residential purposes. The suit premises is situated in an well-known locality of Belegkata which has a mixed occupancy i.e. commercial and residential.

The learned Advocate for the plaintiffs insist for disposal of the instant application without being called to file affidavit-in-opposition and according to him the prevalent market rent at the locality for the suit premises cannot be less than Rs.3,000/- per month. Admittedly there is no documents forthcoming in support of the aforesaid contention but equally we cannot overlook the steep rise in rental value of the property in such mixed locality and there is no fetter on the part of the Court to apply a robust common sense by using and utilizing the experience gained by passage of time while discharging judicial functions.

As indicated above, the locality has mixed occupancy i.e. commercial and residential and in recent time there has been a considerable development relating to infrastructure therein. Even if we discard the contention of the plaintiff/respondent that the prevalent rental value of the suit property would be Rs.3,000/- per month yet in our consideration, it cannot be less than Rs.2,000/- per month.

It is somewhat settled that the appellate Court while passing an order of stay of execution proceeding, must strike a balance between the rights of the parties. Merely because the losing party has a right to appeal provided under the statute, it cannot over-shadow the right of a successful litigant who emerged successful in both the Courts but to wait for the fruits of the decree until the second appeal is disposed of by this Court. To bring equilibrium to the rights of the parties the Courts are not denuded of power to impose condition for granting stay of the execution proceeding. In a suit of such nature the Court can direct the defeating litigant to pay the occupational charges at the prevalent market rate as condition precedent for an order of stay of the execution proceeding [see ***Atmaram Properties Private Limited Vs. Federal Bank Limited (2005) 1 SCC 702***].

We dispose of the application for stay with the following directions:-

- i) The appellants shall deposit the occupational charges at the rate of Rs.2,000/- per month from the date of the decree till the month of December 2020 in the executing Court within February 15, 2021.
- ii) The appellant shall also deposit the occupational charges on and from the month of January 2021 at the rate of Rs.2,000/- per month within 15th day of each month for which it falls due.
- iii) Apart from the same the appellant shall also deposit the arrear rent at the contractual rate in the same fashion within the last day of the Month of February 2021.
- iv) Upon compliance of the directions made

hereinabove, there shall be a stay of all further proceedings the Execution Case pending before the First Court of Civil Judge (Junior Division), Sealdah till the disposal of the instant appeal.

- v) In default of compliance, as indicated above or when the appellant fails to deposit the occupational charges even for a month, the order of stay granted hereinabove, shall stand automatically recalled and it would be open for the plaintiff-respondent to proceed with the execution case.

The application for stay being **CAN 1 of 2019** (CAN 11565 of 2019) accordingly **disposed of**.

(Kausik Chanda, J.)

(Harish Tandon, J.)