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C.O. 89 of 2022

**Chandra Sekhar Biswas
Vs
Chandreswar Prasad Shaw & Anr**

Mr. Kushal Chatterjee,
Mr. Debrup Chowdhury, ... For the petitioner.

Mr. Priyabrata Thakur, For the opposite parties.

The subject matter of challenge in this revisional application is against the order dated 10th December, 2021 passed by learned Additional District Judge, 3rd Court, Barrackpore, 24 Parganas (North) in Title Appeal No. 08 of 2020 granting stay till the disposal of the appeal.

Mr. Kushal Chatterjee, learned advocate appearing for the petitioner submits that petitioner is the decree-holder in a suit for eviction of a trespasser. The decision of the Trial Court was carried in appeal by the opposite parties/appellants in Title Appeal No. 08 of 2020, wherein a blanket order of stay has been granted without deciding the aspect pertaining to occupational charges in respect of the property, allegedly under possession of opposite parties/appellants.

Mr. Priyabrata Thakur, learned advocate appearing for the opposite parties/caveator submits that though there has been a decree against the

opposite parties, but the opposite parties have a definite plea claiming title over the suit property, which has not been appropriately gone into by the Trial Court.

Having considered the submissions of both the sides, it appears that the subject of address in this revisional application is very short, which is relatable to non-granting of occupational charges in respect of the property, alleged to be in possession of the opposite parties/appellants, in spite of having suffered a decree of eviction of a trespasser by Trial Court.

Upon perusal of the impugned order, it appears that the Court has granted stay in application of the provisions under Order 41 Rule 5 of the Code of Civil Procedure, without assigning any reasons therefor, particularly with reference to the subject under reference, relatable to grant of occupation charges.

That being the position, let there be an unconditional stay of impugned order for a period of six (06) weeks from hence.

Till such time, the impugned order is set aside with a direction upon the learned Additional District Judge, 3rd Court, Barrackpore, 24 Parganas (North) to hear out the same afresh within a period of four weeks from the date of communication of this order providing sufficient opportunity of hearing to either of

the parties to this case.

This would not however, prevent the Court below to decide the occupational charges in respect of the property allegedly under possession of the appellants/opposite parties while hearing the prayer for stay afresh.

There should not be any unnecessary adjournment granted to either of the parties to this case, unless it is extremely unavoidable.

All points are thus left open for decision afresh by the Court below, and parties are at their liberty to raise all such points pertaining to the grant of occupational charges before the Court below in connection with hearing afresh of stay petition as mentioned hereinabove.

Mr. Kushal Chatterjee, learned advocate for the petitioner is fair enough to submit that till the hearing of such stay application afresh, within the period mentioned hereinabove, the execution proceeding will not be pursued.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)

