

11.02.2022
Ct. 21
D/L 4
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C.O. 123 of 2022
(Via Video Conference)

Sri Hemanta Kumar Prasad
-Vs-
Sri Sri Lakshimi Narayan Jew & Anr.

Mr. Aniruddha Chatterjee,
Ms. Pampa Dey (Dhabal)

... for the petitioner

This application under Article 227 of the Constitution is at the instance of a tenant who suffers decree of eviction and being aggrieved by the order passed by the Learned Civil Judge (Jr. Div.) Additional Court Sealdah in Ejectment Execution case no. 6 of 2018 on 18.12.2021, whereby the learned Court below have issued writ of delivery of possession directing Court Bailiff to deliver vacant possession of the disputed tenancy after breaking open padlock, if any.

The facts necessary for determination of the present application in gist is that the landlords/ opposite parties filed Ejectment suit No. 491 of 2004 against the present petitioner and which was dismissed by the learned trial Court on 30.8.2014.

Being aggrieved the landlord preferred an appeal being no.2 of 2015 and which was allowed by the Appellate Court on 31.1.2018.

Being aggrieved by the order of the appellate court the tenant preferred second appeal before this Hon'ble high Court being No. S.A. 110 of 2018 and which is pending for hearing. In such appeal the Hon'ble Co-ordinate Bench of This High Court was pleased grant conditional stay of operation of decree of eviction dated 31.1.2018 on payment of occupational charge of Rs.9000/- per month on 09.3.2021.

In the meantime the landlords put the decree dated 31.1.2018 into execution by filing Ejectment execution Case no. 6 of 2018. The petitioner tenant having failed to comply the order of the Hon'ble Co-ordinate Bench of this High Court passed on 19.3.2021 while granting conditional stay of the operation of the eviction decree dated 31.1.2018, the learned executing court proceeded with the execution by passing the impugned order.

Learned advocate for the petitioner submitted that even if conditional stay is not complied with by the tenant no adverse order can be passed against him in view of the order passed by the Hon'ble Full Bench of this High Court in WPA 5323 of 2020 where "Conditional orders of Courts allowing occupation of any premises subject to payment of rent or occupational

charges will continue, notwithstanding the non-deposit of the rent or occupational charges during the period from 15.3.2020 till 28.2.2022 and will not make the tenant liable for eviction. He produced the order passed in WPA 5323 of 2020 on 17.1.2022.

Perused the above order passed in WPA 5323 of 2020 on 24.3.2020 to safeguard the interest of the litigants on account of onset of COVID-19 Pandemic in respect of subsisting interim orders on 16.3.2020 which was likely to expire and also extended period of limitation for institution of different proceedings in the High Court or any subordinate Courts. Such order was extended from time to time and lastly till 8.10.2021.

In the wake of third wave of COVID Pandemic the Full Bench of this Hon'ble High Court in WPA 5323 of 2020 passed an order on 17.1.2022 modifying the earlier order dated 24.3.2020 and pleased to pass following order;-

(1) Interim order subsisting on 17.1.2022 and due to expire on or before 28.2.2022 are extended till 28.2.2022 with liberty to affected parties to apply for vacating or variations of such order.

(2) Conditional orders of Courts allowing occupation of any premises subject to payment of rent or occupational charges will continue, notwithstanding the non-deposits of rent or occupational charges during the period 17.1.2022 till 28.2.2022 and non payment of

rent or occupational charges will not make tenant or occupant liable for eviction till 28.02.22 or earlier order of the court.

(3) All other conditional orders of the Courts will continue to remain in operation until 28.2.2022, notwithstanding the non fulfillment of the conditions imposed for the period from 17.1.2022 till 28.2.2022 or earlier orders of the court.

(4) The benefit of limitation as extended to all the parties in terms of order of the Hon'ble Supreme Court dated 10.1.2022 passed in Suo moto Writ Petition (C) no.3 of 2020 will be available to all parties covered by the said order.

In the present case the conditional stay order was passed on 9.3.2021 and in view of the order passed in WPA 5323 of 2020 the present petitioner was protected from eviction and as well as for non- compliance of conditional order of stay till 8.10.2021 and thereafter from 17.01 2022 to 28.02.2022.

Nothing is there on record to show due compliance of conditional order of stay dated 9.3.2021 passed in S.A. 110 of 2018 by the petitioner during the period from 9th October 2021 to 16th of January 2022, when there exist no protection order passed in W.P.A. 5253 of 2020. That in view of non- complaine of the conditional order passed by the Hon'ble Co-ordinate bench of this High Court, the order of stay stands

automatically set aside during the period from 8.10.2021 to 16.1.2021 and even when the impugned order was passed by the learned court below on 18.12.2021. Therefore I do not find any illegality or infirmity in the order impugned passed by the Executing Court.

Further, nothing has come on record to show whether the Bailiff of the Court was successful in executing of the Writ of Possession issued vide impugned order. The petitioner being a tenant who has already suffered a decree of eviction and has sought order of stay of operation of ejectment decree and after obtaining conditional order of stay has failed to comply the order passed by the Hon'ble Co-ordinate bench of this High Court in S.A. 110 of 2018 on 9.3.2021 does not deserve equity relief in form of stay of execution case from this Court. Therefore this Court does not find any reason to interfere with the order impugned.

Accordingly, **C.O. 123 of 2022** is dismissed.

Interim order, if any, stands discharged.

The petitioner will be at liberty to pray for stay in S.A. 110 of 2018.

There shall be no order as to costs

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)