

9
sandip
Ct. 18
16.03.2022

C.O. No. 160 of 2022
M/s. Signotron (India) Pvt. Ltd.
Vs.
M/s. Nautica Hospitality Consulting Private
Limited.

Mr. Rajarshi Dutta,
Mr. V.V.V. Sastry,
Mr. Nischay Mall,
Mr. Sourav Roy ... For the petitioner.

Mr. Partha Pratim Roy ... For the opposite party.

The opposite party has suffered a decree of eviction in Title Suit No. 203 of 2019 passed by the 2nd Court of learned Civil Judge(Senior Division), at Barasat, District – 24 Parganas (North).

The suit although was decreed but the defendant was directed to vacate the suit property after three months from the date of determination and final adjudication of arrear rent in respect of the suit property.

The plaintiff/decreed-holder aggrieved by the said portion of the said decree has preferred an appeal being F.A.T. No. 191 of 2020 which is now pending before the High Court.

The defendant, the opposite party herein aggrieved by the said decree of eviction, preferred a separate appeal being F.A.T. No. 194 of 2020, which is also pending disposal before the High Court.

In the appeal preferred by the defendant, a conditional order staying the further proceedings of

the execution case levied to execute the decree of eviction being Title Execution Case No. 06 of 2020 was passed subject to the condition the defendant depositing a sum of Rs. 20 lakhs with the Executing Court within two weeks from September 03, 2020, i.e. the date of the said order.

The defendant did not comply the said condition, as a consequence thereof, the conditional order of stay was vacated and the decree-holder was granted liberty to proceed with the said execution case.

The Hon'ble Division Bench of this Court by the order dated July 09, 2020 passed in the appeal preferred by the decree-holder stayed the portion of the decree under challenge in the said appeal and the decree-holder was permitted to proceed with the said execution case.

The judgment-debtor at this juncture approached the executing Court with an application under Order XXI Rule 29 of the Code praying stay of the further proceedings of the said execution case on the ground of pendency of a suit being Title Suit No. 1040 of 2018 filed by the judgment-debtor against the decree-holder in the 2nd Court of learned Civil Judge (Senior Division) at Barasat, District – 24 Parganas (North). In the said suit, the judgment-debtor is praying for decree of declaration of its

tenancy right over the suit property and for a decree of injunction as a consequential relief.

The executing Court by the order impugned has stayed the further proceedings of the said execution case till the disposal of the said suit.

The suit for eviction has been decreed on a finding that the jural relationship of landlord and tenant between the plaintiff, the petitioner herein and the defendant, the opposite party herein is an admitted fact. In view of such finding in the said judgment and decree and in the absence of any order staying the operation of it, the relief sought for in the suit filed by the judgement-debtor has become infructuous, as such, mere pendency of the said suit cannot be a fetter to the power of the Executing Court to proceed with the execution case levied to execute the decree of eviction.

The order impugned is, therefore, set aside. The executing Court is directed to dispose of the execution case as expeditiously as possible in accordance with law without entertaining the prayer of the parties for any unnecessary adjournment.

C.O. 160 of 2022 is allowed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)

