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Ct-08

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FMA 217 of 2022
with
I.A No. CAN 1 of 2022

Smt. Sikha Ghosh & Anr.
Vs.
Smt. Ratna Ghosh

Mr. Saunak Bhattacharya
Mr. Chandra Nath Sarkar
Mr. Saunak Mondal
... For the Appellant

The appellants are successful in staying off a decree passed by the trial court in a suit for eviction of a licensee. The suit was instituted before the learned Civil Judge (Junior Division), 1st Court at Sealdah, in the year 2009 being Title Suit No. 152 of 2009 and the suit was decreed on 16th April, 2018. Thereafter, title appeal was preferred. The appellants took adjournment on three consecutive dates fixed by the appellate court in close proximity. The first appellate court being exasperated with the conduct of the appellants dismissed the appeal for default on the ground of non-appearance of the appellants. Thereafter the appellants filed Misc. Case No. 27 of 2019 for restoration of the said title appeal. Learned first appellate court after hearing dismissed the said Misc. Case on 19th January, 2022, as the appellants had failed to justify their non-appearance when the appeal was called. The appellants thereafter rushed to this Court being fully aware that the decree would be immediately executable and the decree-holder/plaintiff had put the eviction decree dated 16th April, 2018 into execution by filing Title Execution Case No. 98 of 2018 before the learned Civil Judge (Junior Division), 1st

Court at Sealdah, which could not proceed due to pendency of the appeal.

On an assurance given by Mr. Saunak Bhattacharya, learned counsel appearing on behalf of the appellants, that no adjournment shall be prayed in the appellate court below on behalf of the appellants and the appellants shall represent on each and every day fixed by the first appellate court for hearing of the appeal with a further condition that upon payment of Rs.1,00,000/- (One lakh) as compensation to the respondent/decreed-holder either by bank draft or RTGS to the designated bank account of the respondent within three weeks from date, we allow this appeal, upon fulfillment of above two conditions, by giving an opportunity to the appellants to present their case on merit before the first appellate court. In default, the title execution case shall be proceeded in accordance with law.

There shall be an unconditional stay of Title Execution Case No. 98 of 2018 for a period of two weeks and in the event the aforesaid amount is paid by the appellants to the decree-holder, the interim order shall continue till the disposal of the Title Appeal No. 6 of 2019.

On compliance of our aforesaid order, we request the learned Additional District Judge, Fast Track 2nd Court at Sealdah to dispose of the Title Appeal no. 6 of 2019 as expeditiously as possible preferably within six months from the date of compliance of this order without granting any unnecessary adjournment to either of the parties.

We make it clear that if either of the parties are not represented, the learned judge in the lower appellate court shall be at liberty to

dispose of the appeal on merits on the basis of available records within the aforesaid time limit.

The executing court may for the time being act on the communication made by the learned advocate on record representing the appellants with an undertaking to file server copy as soon as it is available.

The appeal is accordingly disposed of even at the admission stage.

In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2022 and the same is also disposed of.

There will be no order as to costs.

This order shall be immediately communicated to the plaintiff/decreed-holder by the advocate on record of the appellants for her information and knowledge.

The Registrar Administration (L & OM) is directed to communicate this order to the learned Additional District Judge, Fast Track 2nd Court at Sealdah.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

