

16.09.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.506 of 2022

**Indo Arya Central Transport Ltd.
Vs.
Saroj Thakar & ors.**

Mr. Mainak Bose,
Mr. Partha Pratim Roy,
Mr. Shaunak Ghosh,
Mr. Sourav Mondal
...for the petitioner

Mr. Saptangsu Basu, Senior Advocate
Mr. Ashok Kumar Jena,
Sk. Omar Sarif
...for the opposite party
nos. 1 and 2

The subject-matter of challenge is against the rejection of a prayer for stay in connection with Title Appeal No.05 of 2022, passed by learned District Judge, South 24 Parganas, at Alipore, now pending before the learned Additional District Judge, 13th Court, Alipore, South 24 Parganas.

Admittedly, this is an appeal preferred against the dismissal of Misc. Case No.53 of 2021 under Order 21 Rule 97 to 101 C.P.C.

Without any controversy, there has been a decree granted touching the suit property. Petitioner claiming to be in possession instituted the referred Misc. Case, seeking determination of his independent title to the property. The court below, after a contested hearing,

dismissed such Misc. Case. An appeal was then carried vide Title Appeal No.05 of 2022.

Mr. Mainak Bose, learned advocate appearing for the petitioner submits that the court below has mechanically rejected the prayer for stay, though initially granted, giving precedence to the technicalities, being oblivious that there would be nothing left for adjudication in the pending appeal.

Mr. Bose upon making such submission proposes for granting protection so that the execution of the decree may not be levied in the meantime.

Per contra, Mr. Saptangsu Basu, learned Senior Advocate appearing for the opposite parties submits that in this case, Apex Court has already dismissed S.L.P., preferred by the original defendant/tenant, against whom decree of eviction has been passed.

Supporting the order of the court below, Mr. Basu submits that there lies nothing to be interfered with the impugned order, and the decree already granted may not be allowed to be frustrated on such frivolous grounds.

Having considered the submission of both sides, it appears that rejection of a prayer for stay is only under dispute in this case.

There has been a stay order already granted initially in connection with the pending appeal, which has been subsequently vacated. The appeal is still

pending. As per submission disclosed by both the parties, the next date before the court below for appeal hearing is scheduled on 29th October, 2022. In a situation like this, when the appeal has been matured enough for hearing, this Court should not interfere by this revisional application.

The revisional application is accordingly disposed of directing the first lower appellate court below to dispose of the appeal either on the scheduled date, or if for any reasons whatsoever, the same could not be taken up, the appeal may be peremptorily taken up for hearing before the second week of November, 2022, if necessary, upon giving hearing of appeal on consecutive dates, and should be disposed of in accordance with law, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

As Mr. Basu is candid enough to assure this Court that till such time of disposal of this appeal, as mentioned hereinabove, the Execution Case pending in the court below shall not be pursued.

The court below in appeal, accordingly, to act upon in view of the assurance given by the learned Senior Advocate appearing for the opposite parties.

Parties are directed to make communication of this order to the learned court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)