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C.O. 1775 of 2022

**Ranjan Gupta
Vs
Shukat Ali & Anr**

Mr. Ratan Lal Saha,
Mr. Ranjit Kumar Ray ... For the petitioner.

Mr. indranuj Dutta,
Mr. Rahul Ghosal,
Mr. Bikram Basak ... for the opposite parties.

Petitioner assails order dated 10th May, 2022 passed by learned Civil Judge (Senior Division), Sealdah in Misc. Case No.4 of 2022, granting occupational charges at the rate of Rs.5000/- to petitioner.

Admittedly, the petitioner suffered eviction decree, which was granted *ex parte*. Subsequently, petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure, which was registered as Misc. Case No. 4 of 2022. In the referred Misc. case, an interim protection was given, granting stay of execution proceeding, pending in the court below.

It is submitted by the learned advocate for the petitioner that the order granting occupational charges, behind the back of the petitioner, is not sustainable, as there is noting reflected in the order impugned, that the copy of the vacating application

has already been served upon the petitioner/judgment-debtor.

Per contra, learned advocate appearing for the opposite parties/decreed holder submits that on the scheduled date, the petitioner filed Hazira, which was sufficient to record presence of the petitioner. However, nothing could be produced today in court regarding service of the copy of the application, as regards the vacating of stay order, already granted by the court below.

Upon perusal of the impugned order, it appears that Rs.5000/- have been granted as occupational charges. In this case, the quantum of occupational charges is not under challenge, alleging the same to have been exorbitantly assessed.

What is disputed in this case, is non-service of notice of application, while proposing for vacating stay order at the instance of the opposite parties/decreed-holder.

Though, Hazira of the petitioner appears to have been filed on the scheduled date, but there is nothing to reveal about taking participation of petitioner in the hearing process.

Admittedly the stay order already granted by the court below has not been vacated. The stay order thus still remains uninterfered with.

When non-service of copy of the application is

the only subject of challenge in this case, the court is of the view that the petition filed by the opposite parties praying for vacating the stay order needs hearing afresh, giving a liberty of hearing to the petitioner.

The revisional application is thus disposed of upon setting the impugned order dated 10th May, 2022, passed by the learned Civil Judge (Senior Division), Sealdah in Misc. Case No. 4 of 2022, with a direction upon the court below to hear afresh, the vacating application filed by the opposite parties/decreed-holder within four weeks from the date of communication of this order, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

In the meantime, the copy of the application filed by the decreed-holder/opposite parties may be made over to the opposite parties, or their learned advocate appearing in the court below, in order to facilitate effective hearing for the purpose.

Petitioner is directed to make communication of this order to the learned court.

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)