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C.O. 1649 of 2021

**Pushpa Dubey & Ors
Vs
Madhabi Mukherjee & Ors**

Mr. Om Narayan Rai,
Mr. Badal Singh,

... For the petitioners.

Mr. Sarathi Dasgupta,
Mr. Altamash Alim,
Mr. Arindam Paul,
Mr. Rohit Banerjee, ... For the opposite parties.

The subject matter of challenge in this revisional application is against the order declining to vacate the interim order due to non-compliance of the Court's order passed in SAT 386 of 2009.

Mr. Om Narayan Rai, learned advocate appearing for the petitioners submits that when there is no arrears of occupational charges, the impugned order vacating the interim order is not sustainable.

It is thus contended by the petitioners that there has been an erroneous decision reached by the Court below, while vacating the interim order granted in SAT 386 of 2009.

Admittedly, by order dated 13th May, 2010 in SAT 386 of 2009, while granting stay, some conditions regarding deposits of occupational charges at the rate mentioned in such order were put, non-compliance of such condition would, however, render the interim

order to stand vacated.

It would be profitable here to mention the operative portion of the order passed in SAT 386 of 2009 dated 13th May, 2010, which may be mentioned as hereunder:

- i) *The appellant shall deposit before the learned Executing court concerned where the Title Execution Case No. 83 of 2009 is pending all decretal dues, if any, within a period of four weeks.*
- ii) *The appellant shall deposit before the aforesaid executing court concerned all arrears of rent, if any, within four weeks. Such arrear of rents shall be calculated up to April, 2010.*
- iii) *The appellant shall go on depositing occupation charges @ Rs. 5000/- per month within 10th of the month following the month for which it becomes due. Such deposit shall be made before the learned Executing Court, as aforesaid. The first of such deposits shall be made within 10th of June, 2010 for the month of May, 2010.*
- iv) *The appellant shall prepare the requisite number of paper books out of court and file the same in the department concerned within four weeks from the date of receipt of notice of arrival of the lower court records.*
- v) *In default of compliance of any of the conditions mentioned above, the interim order shall stand vacated.*

Further admitted position is that in C.O. 471 of 2021, a direction was there directing the Court below to decide the application, filed by the petitioners, afresh, upon considering paragraph 4 of such application, wherein there has been allegation levelled against the petitioners to have committed defaults in the deposit of occupational charges commencing from November, 2011.

Learned advocate for the petitioners submits that when petitioners already deposited occupational charges month by month doing compliance of the direction passed in SAT 386 of 2009 so as to enjoy the interim order granted by the appellate body, the learned Court below ought not to have vacated the interim order.

Per contra, Mr. Sarathi Dasgupta, learned advocate appearing for the opposite parties, upon advertng to conditions '4' mentioned in order dated 13th May, 2010, of SAT 386 of 2009, submits that there is a further condition imposed revealing automatic vacation of interim order, in the event of non-compliance of the conditions imposed in the order itself.

Mr. Dasgupta, candidly submits that petitioners are not in arrears of occupational charges. However, it is his contention that there has been departure committed by the petitioners to ensure compliance of the appellate Court's order to enjoy the stay order, because there are as many as on 9 occasions, when the petitioners purposefully and deliberately deposited occupational charges beyond the time stipulated in the order dated 13th May, 2010.

Supporting the order of the Court below, Mr. Dasgupta submits that no latitude should be shown to such type of petitioners exercising discretion, who has

deliberately violated the conditions of the Appellate Court's order without any justified reasons.

The situation now it stands that there is nothing due left towards arrears of occupational charges. There might have some departure committed in doing due obedience to the order passed by the Appellate Court so as to enjoy the interim order, for the circumstances, the then prevailed.

Mr. Om Narayan Rai, learned advocate appearing for the petitioners, however, discloses that there will be no further departure committed to ensure compliance of the order of the Appellate Court for continuation of the interim order.

The revisional application is thus disposed of without making any interference with the order impugned, with observation made hereinabove.

This would not, however, prevent the petitioners from reviving the stay order, already granted by the Appellate Court, taking steps before the appellate Court in accordance with provisions of law.

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)

