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Ct. 18
14.07.2022

C.O. No. 1851 of 2022

Raju Kundu
Vs.
Shaila Devi Shaw & Ors.

Mr. Rajdeep Bhattacharya ... For the petitioner.

The petitioner was the substituted decree-holder of the decree of eviction passed in the Ejectment Suit No 30 of 2008.

The judgment-debtors during the pendency of the appeal against the decree passed in the suit were put into terms to deposit occupational charges to enjoy the stay of the further proceeding of the execution case levied to execute the said eviction decree.

The decree on attaining finality after dismissal of the Title Appeal and the Second Appeal, was satisfied in full in execution thereof.

The petitioner applied in the disposed of suit seeking permission to withdraw the said occupational charges.

The learned Trial Judge by the order impugned being order no. 89 dated January 11, 2021 has dismissed the said application holding that the petitioner has failed to specify the amount sought to be withdrawn.

The dismissal of the said application on the said ground alone is not justified. However, the occupational charges were deposited after the disposal of the suit, therefore, must have been in the Execution case, as such, the application for withdrawal of the said deposits should have

been made in the file of the Execution case, not in the file of the suit.

The order impugned, for the aforesaid reason, although is not interfered with, but the same would not stand in the way of the petitioner to apply for the withdrawal of the said deposits in the file of the Execution case levied to execute the decree of eviction passed in the aforementioned suit.

If such an application is filed, the Court below is directed to allow the petitioner to withdraw the said deposits subject to verification of the identity of the petitioner to the satisfaction of the Court.

C.O. 1851 of 2022 is disposed of with the above terms 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.)