

21.09.2022
Item No.16
Ct. No.7
CHC
(disposed of)

C.O.1913 of 2022

**Union of India, Ministry of Communication of IT,
Government of India & ors.**

Vs.

Ashis Kumar Ray

Mr. Shyamal Chakraborty,
Mr. Debajyoti Mondal

...for the petitioners

Mr. Sounak Bhattacharya,
Mr. S. S. Bhutoria

...for the opposite party

The subject-matter of challenge is against the order of attachment against the outstanding amount, relatable to the *mesne profits* already assessed by the court below.

Mr. Chakraborty, learned advocate appearing for the petitioners submits that there is a Post Office functioning at the suit property.

Admittedly, Post Office was inducted in the suit property on the strength of a lease for a stipulated period of time.

It is submitted that after the expiry of the lease period, the opposite party voluntarily accepted the premium of lease without disputing with anything. Subsequently, an eviction decree has been granted, and in connection therewith *mesne profits* has been assessed. An appeal has already been filed along with

an application under Section 5 of the Limitation Act, which has been set for hearing on 19th January, 2023, by the first lower appellate court.

It is thus contended that there will be serious prejudice caused to the opposite party, if the attachment takes place in the meantime, pending decision of the appeal.

Mr. Chakraborty proposes for protecting the interest of the Post Office, so that attachment may not take place in the meantime.

Per contra, Mr. Sounak Bhattacharya, learned advocate appearing for the opposite party strenuously argues that the decree of eviction has been granted in aid of Order 12 Rule 6 C.P.C., which has not been challenged. The *mesne profits* assessed subsequently, has been challenged preferring an appeal.

There is no dispute raised by Mr. Bhattacharya as regards pendency of Section 5 application in connection with the pending appeal.

Mr. Bhattacharya further submits that a non functional zero balance account of the postal authority, not connected with the people at large, has been attached as against the outstanding amount of Rs.60,56,717/- together with interest at the rate of 10% as mentioned in the impugned order.

Upon referring such fact, Mr. Bhattacharya submits that order of attachment would remain undisturbed.

In reply, Mr. Chakraborty taking resort to Order 21 Rule 26 C.P.C. submits that executing court below in an appropriate case has the authority to grant stay for a limited period of time, and that provision has not been duly taken care of by the executing court below.

Since the order of attachment, as against the outstanding amount, is as good as money decree, there cannot be a unilateral stay without securing some amount as against the principal outstanding amount. When application for condonation of delay under Section 5 of the Limitation Act has already been set for hearing on 19th January, 2023, the same may be expedited taking advantage of this order, and if necessary upon preopening the application.

Petitioners as such is given liberty to file an application seeking preponement of the date before the first lower appellate court upon notice to the opposite party, and if any application is filed before first lower appellate court for hearing of Section 5 application, the same may be addressed in accordance with law giving a hearing for the purpose to both the sides.

Pending decision of Section 5 application, petitioners are directed to secure Rs.50,00,000/- (Rupees Fifty Lakh) before the executing court below

within three weeks after the Puja Vacation of the court below.

It may be mentioned over here, as per submission disclosed by Mr. Bhattacharya, that in the meantime, Post Officer has already vacated the suit premises.

The order impugned is thus set aside with the direction upon the petitioner as mentioned hereinabove.

In the meantime, the execution shall remain stayed till the hearing of Section 5 application, as referred hereinabove.

This order may not be encashed either in connection of hearing of Section 5 application, or in appeal, if there be any.

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

With this observation/direction, the revisional application stands disposed of.

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.)