

07.03.2022
(S/L-18)
Ct.-18
(Susanta)

C.O. 2388 of 2019

Sri Rajesh Kumar Agarwal
-Vs-
Sri Swami Prasad Dutta

Mr. Amitabha Ghosh,
Mr. Nabanita Chatterjee,
Sk. Sajauddin,
.... For the Petitioner.

Mr. Debyajyoti Raha,
Mr. S. N. Bhattacharyya,
... For the Opposite Party.

The opposite party filed the Title Suit no. 20 of 2012 before the 2nd Court of learned Civil Judge(Senior Division), Barasat, District 24-Parganas (North) for eviction of the petitioner from the suit property on the ground that the petitioner is a licensee under him .

The suit was once decreed ex-parte and during the pendency of an application for setting aside the said decree, the further proceeding of the Execution case levied to execute the said ex-parte decree was stayed subject to the condition of deposit of occupation charges by the petitioner with the Executing Court.

On restoration of the said suit, the petitioner applied for withdrawal of the amount deposited by him with the Executing Court on account of said occupation charges.

The learned Trial Judge by the order impugned has refused the prayer of the petitioner but allowed the plaintiff/opposite party to withdraw the said amount.

Allowing the plaintiff to withdraw the said amount in the absence of any prayer, is not warranted, therefore, the said part of the order impugned is set aside.

This Court is informed by the learned counsel for the parties that during the pendency of the revisional application, the suit has been decreed and the appeal challenging the said decree has also been dismissed.

Mr. Amitabha Ghosh, learned advocate for the petitioner submits that his client intends to file a second appeal before this Court against the appellate decree.

At this stage, the prayer of the parties for withdrawal of the said amount cannot be considered as the decree passed in the suit has not yet attained finality.

The parties are at liberty to apply for withdrawal of the said amount at the appropriate stage.

The revisional application is allowed in part.

C.O. 2388 of 2019 is thus disposed 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.)