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C.O. 1959 of 2022

**Smt Bijaya Ghosh & Ors
Vs
Sri Pravat Ghosh & Ors**

Mr. Amal Krishna Saha,
Mr. Sauvik Sarkar,
... For the petitioners.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
... For the opposite parties.

The subject matter of challenge in this revisional application is against the order dated 5th May, 2022 passed by learned Civil Judge (Junior Division), 7th Court, Howrah in Misc Case No. 14 of 2013 arising out of Title Execution Case No. 1 of 2011 having reference to Title Suit No. 12 of 2005 granting stay of such Misc case.

Mr. Amal Krishna Saha, learned advocate appearing for the petitioners/decreed holder at the very threshold of this case submits, adhering to the order dated 19th August, 2019, that the prayer for stay has already been rejected by the selfsame Court earlier.

Mr. Saha contends that the Court below being oblivious of his previous rejection of stay order, again stay has been granted mechanically and unconditionally without even granting any occupational charges.

It is thus submitted by Mr. Saha that unqualified

stay order being granted, would cause decree holder to face undue hardship, and the execution of the decree may be delayed for not fault on the party of the petitioners/decreed-holder.

Per Contra, Mr. Debjit Mukherjee, learned advocate appearing for the judgment debtor/opposite parties submits that appeal has already been preferred, being Title Suit No. 149 of 2016, against the decree passed in Title Suit No. 12 of 2005, which is still pending, and in connection therewith neither the stay application, nor the application for condonation of delay filed by the opposite parties under Section 5 of the Limitation Act has yet been disposed of. The previous rejection of the stay, according to Mr. Mukherjee is relatable to the execution case, while the present stay order granted by the Court below pertains to pending Misc case.

Be that as it may, there has been a previous rejection of stay order to stall execution proceeding by order dated 19th August, 2019. It is also true that there is an appeal preferred against the decree passed in Title Suit No. 12 of 2005, and an application for condonation of delay under Section 5 of the Limitation Act, together with the prayer for stay is also pending before the appellate Court.

The situation as it stands now, the Misc case no.

14 of 2013 filed under Section 47 CPC, if disposed of, in an expeditious manner, that would streamline the entire controversy surfaced at the moment pertaining to the stay order being granted in the referred Misc case.

The revisional application is thus disposed of directing learned Civil Judge (Junior Division), 7th Court, Howrah in Misc Case No. 14 of 2013 to ensure expeditious disposal of referred Misc case, providing sufficient opportunities of hearing to either of the parties to this case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

While endeavouring such exercise, the referred Misc case may be disposed of preferably within six months from the date of communication of this order, excluding the period of puja vacation to be intervened in the Trial Court.

This would not, however, prevent the petitioner to seek for occupational charges, if any, in accordance with law, either in connection with the pending Misc case or in the pending appeal.

Since it is not a suit for eviction, the Court below has every right to decide the issue of occupational charges, if raised in accordance with law, giving an opportunity of hearing to the either side.

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

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)