

16.03.2022
(S/L-23)
Ct.-18
(Susanta)

C.O. 2860 of 2019

National Insurance Company Limited
-Vs-
M/s. NMTC Limited

with

C.O. 570 of 2022

National Insurance Company Limited
-Vs-
M/s. NMTC Limited

Mr. Jishnu Saha,
Mr. Debjyoti Datta,
Mr. Arijeet Doss Mullick,
.... For the Petitioner.
Mr. Anup Banerjee,
Ms. Sanchita Barman Roy,
.... For the opposite party.

These two revisional applications are between the same parties in respect of the self-same property, as such, taken up together for consideration and disposal.

The petitioner initiated a proceeding under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction of the opposite party from the suit property registered before the Estate Officer being Case no. 1 of 2015.

The petitioner initiated a separate proceeding against the opposite party under Section 7 of the said Act of 1971 for damages registered before the Estate Officer as Case no. 1A of 2015.

The Estate Officer by two separate judgments and orders, both dated April 16, 2019, disposed of the aforesaid cases.

The Estate Officer by the judgment and order passed in the eviction proceeding directed the opposite party to vacate the suit premises within 15 days from the date of the said order and in the judgment and order passed in the proceeding under Section 7 of the said Act of 1971 assessed the damages at Rs. 8,01,57,660/- only to be paid by the opposite party within 15 days from the date of the said order.

The opposite party aggrieved by both the judgment and order of the Estate Officer preferred two separate appeals.

The appeal against the judgment and order of eviction being Misc. Appeal No. 28 of 2019 and appeal against the judgment and order of assessment of damages being Misc. Appeal No. 29 of 2019 respectively are now pending before the Court of learned Chief Judge, City Civil Court, Calcutta.

The opposite party filed two separate applications in the said two appeals praying stay of operation of the judgments and orders under challenge therein.

The Appeal Court below by a common judgment dated July 09, 2019 has disposed of the said two applications.

The order staying the operation of the order of eviction is under challenge in C.O. 2860 of 2019.

The grievance of the petitioner against the said order is that the said application for stay was disposed of without affording any opportunity to the petitioner to file written objection to it for which the

petitioner could not place the materials on record to show that the occupational charge fixed by the Appeal Court below is much below the rate of rent prevailing in the area of the suit property.

The Appeal Court below in the self-same order observed that the assessed damages is in dispute and pending decision on the said dispute the appellant cannot be directed to pay the damages as directed by the Estate officer.

The learned Trial Judge disposed of the application for stay directing that the order passed in Miscellaneous Appeal No. 28 of 2019 shall govern the application for stay filed in Miscellaneous Appeal No. 29 of 2019 which is under challenge in C.O. 570 of 2022.

The grievance of the petitioner against the said order is that the assessed damages is a money decree, as such to get an order of stay of the direction of the Estate Officer to pay the said assessed damages, the appellant, the opposite party herein is required to deposit the said amount but the petitioner could not canvass the said point before the Appeal Court as the said application for stay was also disposed of without affording the petitioner an opportunity to contest it by filing written objection.

The petitioner is seeking an opportunity to contest the said applications for stay, the petitioners are entitled to such opportunity.

The orders impugned in the present revisional applications are, therefore, set aside.

The Appellate Court below is requested to reconsider the applications for stay after giving opportunity to the petitioner to file written objection to the said applications.

The appeal Court below is further requested to make all endeavour to dispose of the said applications within one available effective working month of his Court from the date of communication of this order and in doing so shall not grant any unnecessary adjournment to either of the parties.

C.O. 2860 of 2019 and C.O. 570 of 2022 are 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.)