

31.01. 2022

Ct. 21

D/L 11

C.O. 2149 of 2021

(Via Video Conference)

Sangeeta Purohit & Anr.

-Vs-

Aruna Shukla & Ors.

Mr. Shubham Gupta,

Mrs. Debarati Das,

... For the petitioners

Mr. Ganesh Prasad Show

... For the opposite parties

The petitioners file affidavit of service showing due service on the learned Lawyers for the opposite parties.

The matter is taken up for hearing. Heard the learned Lawyers for both sides.

The petitioners who are sub tenants being aggrieved by the order of rejection of their application under Section 151 of Civil Procedure Code and where they have prayed for stay of Ejectment Execution Case No. 119 of 2019 by the learned Judge, 3rd Bench, Presidency Small Causes Court on 28.09.2021 has filed the present case under Article 227 of the Constitution of India.

The facts of the case in gist is that the opposite parties no. 1 to 4 being the owners/landlords of the

disputed tenancy had filed an Ejectment Suit No. 417 of 2012 against their tenant/the opposite party no. 5 Ms. Ganeshdas Shankar Lal, a proprietorship concern on the ground to subletting. The said suit was decreed in favour of the opposite party nos. 1 to 4.

On obtaining decree of eviction, the opposite party nos.1 to 4 have filed Ejectment Execution Case No. 119 of 2019. In such Execution Proceeding, the present petitioners who are sub tenants filed Misc. Case No. 240 of 2019 under Order 21 Rule 97, Rule 100 and Rule 101 read with Section 151 of Civil Procedure Code. In such Misc. Case they have filed an application under Section 151 of Civil Procedure Code for stay of the entire proceeding of the Ejectment Execution Case No. 119 of 2019 and which was rejected by the learned Executing Court by passing the impugned order,

It is admitted fact that no appeal has been preferred against the Ejection Decree till this day, but bailiff of the court could not execute the decree due to resistant put by the present petitioners/the sub-tenants. Then landlords by filing Misc. Case No. 190 of 2019 have to seek for police help to get the decree executed.

It has been contended by the learned Lawyer for the decree holders/ landlords that since the opposite party no. 5 sublet the tenancy without landlords' consent and as such the sub tenants/the present

petitioners have no locus standi to challenge the legality of eviction decree passed against the original tenant/the present opposite party no. 5. In the present case eviction of opposite party no. 5 was sought on the ground of sublet and eviction decree has been passed against the present opposite party no.5 on the ground of sub-letting. Therefore, the present petitioners being a declared sub tenants have no legal right to challenge the decree of eviction or seek stay of operation of the Execution Proceeding. The present petitioners have filed the Misc. Case No. 240 of 2019 just to delay the Execution Proceeding.

However, both the learned Advocates for the parties submitted that present revisional application may be disposed of with a direction to the learned Court below to dispose of Misc. Case No. 240 of 2019 filed by the present petitioners/sub tenants and Misc. Case No. 190 of 2019 filed by the decree holders for police help for Execution of decree as early as possible.

In view of such submissions the present Misc. Case is disposed of on consent without entering into the merit of the impugned order. Therefore, there is no need to set aside the impugned order.

Accordingly C.O. 2149 of 2021 is disposed of with a direction to the learned court below to dispose of both the pending Misc. Case No. 190 of 2019 and Misc. Case No. 240 of 2019 filed by the parties as

expeditiously as possible at any event within six months from the date of communication of this order and without granting any adjournment whatsoever to any of the parties.

Interim order, if any, stands discharged.

There will be no order as to cost.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)