

22.12.2022
KC(5)

S.A.T. 169 of 2022
Bijoy Kumar Chakraborty
-versus-
Tapan Chakraborty
With
CAN 1 of 2022

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal.....For the appellant.

This second appeal is entertained on the undertaking of learned advocate-on-record for the appellant to file an affidavit of service by 23rd December, 2022.

None appears for the respondent.

A point is sought to be raised that mis-description of the suit premises, which point was not taken at the trial stage, ought to have been entertained at the first appellate stage. In not doing so, the learned first appellate court has committed a serious error of law and a substantial question of law has arisen in this second appeal.

We do not find any merit in this contention. As rightly held by the learned first appellate court, suit description is a mixed question of law and facts and in the facts of the case could not be entertained for the first time at the first appellate stage.

However, considering the submissions made by learned counsel for the appellant, we grant time to his client to vacate the suit premises by 31st December, 2023 upon fulfilment of the conditions below.

From August, 2022 (the first appellate court's decree having been passed in July, 2022) the appellant shall pay an enhanced amount of occupation charges @ Rs.5,000/- (Five Thousand) per month, being Rs.1,500/- above from Rs.3,500/-, the last rent paid by him to the respondent. The arrear occupation charges up to December, 2022 shall have to be cleared by 31st March, 2023. The current occupation charges from January, 2023 till December, 2023 shall have to be paid by the 7th of each month in advance.

Execution proceedings shall not be undertaken by the respondent or shall not be proceeded with, if already undertaken, up to 31st December, 2023. However, in default of payment of the occupation charges in the manner directed or upon failure to vacate the premises by 31st December, 2023, execution may be levied forthwith.

The payment of the above occupation charges is without prejudice to the rights and contentions of the respondent to claim *mesne* profit or any other relief in respect of rent or occupation charges from the competent jurisdiction.

The appeal (S.A.T. 169 of 2022) and the connected application (CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)