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18.01.2022

**C.O. No. 2353 of 2021
(Via Video Conference)**

**Sri Nakul Chandra Dey
Vs.
Sri Dhiraj Sanbui**

Mr. Goutam Thakur,
Ms. Anandamayi Ghosh,
Mr. Debasis Ghosh ... For the petitioner.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali ... For the opposite party.

The revisional application under Article 227 of the Constitution of India is directed against the Order No. 20 dated December 16, 2021 passed by the 2nd Court of learned Civil Judge, (Junior Division) at Chandernagore, District – Hooghly in Title Execution Case No. 09 of 2020.

The petitioner has suffered a decree of eviction in Title Suit No. 90 of 2018 and aggrieved by the said decree has preferred an appeal being Title Appeal No. 17 of 2020 pending before the learned Civil Judge, (Senior Division) at Chandernagore, District – Hooghly.

The decree holder, the opposite party herein in the meantime has put the decree into execution giving rise to the connected Execution Case.

The Appeal Court below by an order dated January 20, 2021 stayed the further proceedings of the said execution case subject to payment of occupational charges at the rate of Rs. 2,000/- per month with a rider that in default of payment of the said amount for any month, the stay so granted would be vacated.

The petitioner defaulted in making the payment of such occupational charges for some period, as a consequence thereof the said order of stay stood vacated.

The executing Court, under such circumstances, by the order impugned has decided to proceed with the execution case.

The petitioner in terms of the order passed in the present revisional application has deposited the entire arrear occupational charges before the Trial Court. In fact, admittedly an excess amount of Rs.27,975.00 (Rupees twenty seven thousand nine hundred seventy five) has been deposited.

In view of the aforesaid development, the order of stay passed by the Appeal Court below stands revived with the condition of default.

The excess amount deposited shall be adjusted against the future occupational charges.

The photocopy of the documents evidencing deposit of the arrear occupational charges with the Trial Court filed by Ms. Anandamayi Ghosh, learned advocate for the petitioner be kept with the record.

Mr. Ayan Banerjee, learned advocate appearing on behalf of the decree holder/opposite party prays that his client may be permitted to withdraw the occupational charges deposited with the trial Court and the current occupational charges may also be paid to him.

The decree holder/opposite party is permitted to approach the learned Trial Judge for withdrawal of the occupational charges deposited by the petitioner and upon furnishing an undertaking before the said Court that in the event the petitioner succeeds in appeal he would refund all

the amount of occupational charges to be received by him to the petitioner, the learned trial Court shall permit the decree holder/ opposite party to withdraw the said deposits.

So far the current occupational charges is concerned, the petitioner henceforth shall remit the same to the bank account of the decree-holder/opposite party.

The details of such bank account shall be furnished to the learned advocate for the petitioner by the learned advocate for the decree-holder/opposite party within a week from date.

The decree-holder/opposite party shall be liable to refund the current occupational charges to be received by him also to the petitioner in the event the aforesaid appeal is allowed.

C.O. 2353 of 2021 is 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)

