

12.12.2022
Item No.13
Ct. No.7
CHC
(disposed of)

C.O.2959 of 2022

**The Authorised Officer, Kotak Mahindra Bank
Limited
Vs.
M/s. Krishna Sarees, a proprietorship Firm
represented through its Proprietor Vijay Ajariwal
& ors.**

Mr. Aniruddha Chatterjee,
Ms. Niharika Singh,
Ms. Shubhangini Singh,
Mr. Ashok Kumar Singh
...for the petitioner

While assailing the impugned order dated 10th June, 2022, passed by learned C.M.M., Kolkata, in Misc. Case No.139 of 2021, Mr. Chatterjee, learned advocate appearing for the petitioner, submits that in the absence of any stay order being granted in the writ petition being WPA No.9719 of 2022, pending before this Court, the court below ought not to have itself passed an order directing not to proceed to take physical possession of the immovable properties till disposal of the writ application.

It is further submitted that mere filing of any matter before this Court, be it appeal or writ application, would not itself operate as a stay to the proceedings pending in the court below, unless stay of the proceedings is specifically granted by the superior court.

It is thus incidentally submitted by Mr. Chatterjee that there has been already an order passed on 21st February, 2022, directing petitioner to take physical possession of the immovable properties, after fulfillment of the formalities in accordance with law.

It is strongly contended by Mr. Chatterjee that the order passed by the court below on 21st February, 2022, directing to take physical possession of the immovable property, may not be allowed to be stalled merely upon visualisation of a pendency of writ application, deviating the principle enunciated under Order 41 C.P.C.

Upon perusal of the impugned order, it appears that the court below for an abundant precaution directed not to pursue physical possession of the immovable properties, though there has been an order already passed to that effect on 21st February, 2022, upon viewing the existence of a writ application, mentioned hereinabove, even in the absence of a stay order. The proceedings pending in the court below thus may not be allowed to be stalled in an endless manner merely upon seeing pendency of any application before this Court.

The revisional application is thus disposed of directing the court below to insist upon production of the stay order, if any passed in the writ application within certain period of time, failure of which, the

court below may proceed to give effect to its own order passed on 21st February, 2022 directing delivery of possession of immovable properties.

Thus an opportunity may be extended to the opposite parties requiring them to produce copy of the stay order, if any granted in Writ Petition being WPA 9719 of 2022, within a fortnight from the date of communication of this order to the court below.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)