

07.02.2022
Ct. No.18
Item No.39
AJ.

**C.O. No. 3635 of 2018
(Via Video Conference)**

**Sri Ajit Kumar Nandi & Ors.
Vs.
Sri Amar Nath Gupta & Ors.**

Mr. Rupak Ghosh,
Mr. Ayan Kumar Boral.
... for the petitioners.
Mr. Molay Roy.
... for the opposite party no.1.

Mr. Rupak Ghosh, learned counsel appears on behalf of the petitioners and files affidavit-of-service through his junior Mr. Ayan Kumar Boral, learned advocate in Court today, which is taken on record.

The present revisional application under Article 227 of the Constitution of India is directed against the order dated August 03, 2018 passed by the 11th Bench of learned Chief Judge, City Civil Court at Calcutta in Title Appeal No. 25 of 2018.

The petitioners are the decree-holders of the decree of eviction passed in Ejectment Suit No. 198 of 2009. The judgment-debtors/opposite parties aggrieved by the said decree have preferred the aforesaid appeal.

The petitioners have put the said decree into execution giving rise to Ejectment Execution Case No. 66 of 2018 before the 4th Bench of Presidency Small Causes Court, Calcutta.

The executing Court by the Order No. 06 dated July 30, 2018 allowed the prayer of the judgment

debtors for adjournment of the said execution case enabling them to bring order of stay of further proceedings of the said Execution case from the aforesaid appeal Court subject to payment of occupation charges at the rate of Rs. 15,000/- per month.

The grievance of the petitioners is that the appeal Court has stayed the operation of the judgment and decree under appeal on payment of occupation charges at the rate of Rs. 7,000/- per month completely overlooking the occupation charges already fixed by the executing Court.

The executing Court when has fixed an amount on account of occupation charges as the condition for stay, the appeal Court while staying the operation of the decree under appeal, is obliged to take into consideration the said amount, having not done so, the appeal Court has acted with material irregularity, as such, the order impugned is set aside.

The appeal Court below is requested to decide the application for stay afresh in accordance with law obviously after taking the said order of the executing Court into consideration.

The appeal Court shall make all endeavour to dispose of the said application for stay as expeditiously as possible, preferably, within a period of three available effective working months of the said Court from the date already fixed in the said appeal.

C.O. 3635 of 2018 is allowed 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)