

136 24.11.23

Ct. No. 04

akd

F.A.T. 114 of 2019
CAN 1 of 2019 (Old No. CAN 2868 of 2019)

Ajit Kumar Dutta

Vs.

Sk. Milan

Re: CAN 1 of 2019 (Old No. CAN 2868 of 2019)

Mr. Rittick Chowdhury,

Mr. D. N. Maiti,

Ms. A. Singh.

... for the appellant.

The affidavit of service filed today reveals that the service was effected upon the plaintiff/respondent on 16th November, 2023. There is no representation on behalf of him when the matter is taken up for hearing.

The instant appeal is filed by the appellant assailing the judgement and decree passed by the Trial Court by which the earnest amount was directed to be refunded to the respondent with an interest at the rate of 12 per cent per annum on and from 27th September, 2006 till the actual payment. When the instant application was moved for an interim order on 6th October, 2023, this Court directed the appellant to deposit the decretal amount together with interest as awarded by the Trial Court with the Executing Court.

It is submitted by the learned Advocate for the appellant that the aforesaid amount has been deposited with the Executing Court on 11th October, 2023. A photocopy of challan evincing the deposit of the aforesaid amount is filed in Court today which shall be kept with the record.

This is an application seeking stay of the execution proceeding pending the instant appeal.

We are not oblivious of the proposition of law that the Court should not pass blanket order of stay more particularly in case of a money decree and put the

appellant to terms, which the Court may deem fit and proper.

Since the entire decretal amount has been deposited, we find that the appellant's conduct is bona fide and, therefore, in the event the execution is allowed to be proceeded with, it would cause immense injury to the appellant.

In view of the above, there shall be a stay of all further proceeding in Title Execution Case No. 7 of 2019 pending before the learned Civil Judge (Senior Division), 1st Court, Paschim Medinipur till the disposal of the instant appeal.

The Executing Court is directed to invest the said amount in an interest bearing fixed deposit scheme to be opened with any nationalized Bank and shall continue to renew the same until further order so passed in the instant appeal.

The application for stay being CAN 1 of 2019 (Old No. CAN 2868 of 2019) is thus disposed of.

Re: Appeal

The appellant is directed to put in the postal cost, written up notice forms for effecting service of notice of appeal upon the respondent within a week from date.

After the service of notice of appeal the office shall put a seal that the appeal is ready as regards service.

Let the Lower Court Records be called for by special messenger at the cost of the appellant. Such cost shall be put in within a week from date. The office is directed to bring the Lower Court Records immediately upon deposit of the special messenger cost.

The office shall examine the Lower Court Records after its arrival and if it is found complete shall issue a notice under Rule 12 of Chapter IX of the Appellate Side Rules upon the learned Advocate on record of the appellant.

The appellant shall prepare and file 8 copies of informal paper books – printed, typewritten or cyclostyled, as the case may be, - out of Court, within four weeks from the date of service of notice of arrival of records.

All other formalities pertaining to preparation of paper books are dispensed with.

In the event, service is effected upon the respondent and the paper books are filed, the office shall put a seal that it is otherwise ready for hearing.

Liberty is granted to the parties to mention the appeal for hearing.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)