

Item No. 10
07.08.2023
Court. No. 19
GB

C.O. 937 of 2023

Smt. Sumati Roy & Anr.
Vs.
Pashupati Roy

Mr. Indrajit Bhattacharjee

...for the Petitioners.

*Mr. Arijit Sarkar,
Ms. Prajaaini Das*

...for the Opposite Party.

Having heard the learned advocates for the respective parties, this Court is of the view that the learned Civil Judge (Junior Division), Barrackpore erred in passing the order dated December 22, 2022, thereby, staying the Title Execution Case No.5 of 2019 arising out of Title Suit No.152 of 2017, without making any orders for payment of occupational charges.

The plaintiffs obtained a decree of eviction. The decree was an ex parte decree and the defendant filed an application under Order 9, Rule 13 of the Code of Civil Procedure. The said application was also dismissed. The defendant did not prefer any appeal therefrom, instead the defendant filed an application under Section 47 of the Code of Civil Procedure, challenging the title of the landlord.

It is submitted that the said application has been kept pending but the execution case has been stayed. The stay has been extended from time to time but the application under Section 47 of the Code of Civil Procedure has not been disposed of.

Considering the submissions of the respective parties, this Court is of the view that the petitioners are entitled to occupational charges. It is further directed that the application under Section 47 of the Code shall be disposed of within a period of three months from the next date fixed. The stay of execution shall continue, provided the judgment debtor pays a sum of Rs.2,000/- per month as occupational charges from the date of decree and also the current occupational charges month by month within 10th of every succeeding month. The decree is dated November 30, 2018. Thus, the arrear occupational charges shall be paid from the month of December 2018. The total arrear from December 2018 till July 2023 (Rs.2000/- per month) shall be liquidated in three equal monthly instalments. Fraction if any, shall be added to the last instalment. First of such instalment shall be paid along with occupational charges for the month of August 2023, within September 10, 2023. In case of default in payment of the amounts as directed, the execution case shall continue and the application under Section 47 of the Code shall be deemed to be dismissed for non-compliance of the order of this Court, without further reference to this Court.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)