

S/L 14
13.4.2023
Court No.652
SD

CO 843 of 2021

Pradip Kumar Dawn & Anr.
Vs.
Smt. Sabitri Mondal

Mr. Aniruddha Chatterjee
Mr. Debabrata Ray

...for the Petitioners.

Affidavit of service filed by the petitioners in court today be kept with the record.

In spite of service, opposite party is not represented.

This is an application under Article 227 of the Constitution of India against the order dated 26.02.2021 passed by the learned Additional District Judge, Barrackpore, North 24 Parganas in Title Appeal No.3 of 2020 in connection with Ejectment Suit No.81 of 2011.

The petitioners contended that the petitioners as plaintiffs filed suit for eviction and recovery of khas possession and mesne profit against the opposite party/defendant being Ejectment Suit No.81 of 2011. After hearing both the parties, learned trial court was pleased to decree the said suit on contest in favour of plaintiffs thereby directed the defendant to quit and vacant the suit premises within 90 days from the date of passing of the order.

Being aggrieved and dissatisfied with the said judgment and decree dated 23.12.2019 and 04.01.2020, the defendant/opposite party herein preferred present Title Appeal No.3 of 2020 and on the same date, the opposite party/defendant filed an application for stay of operation of

the aforesaid judgment and decree passed in said Ejectment Suit No.81 of 2011.

The petitioners herein as respondents filed objection against the stay application and in that objection the plaintiffs/respondents claimed occupational charges at the rate of Rs.3500/- per month as estimated by the Engineer Commissioner in his report dated 02.3.2020.

However, the learned court below, after hearing both the parties, was pleased to pass the impugned order whereby in order to ascertain the occupational charges of the suit premises, he referred the matter to the Rent Controller for submission of report.

Learned counsel appearing on behalf of the petitioners submits that there is no provision for referring the issue before the Rent Controller for determination of the occupational charges. Such reference can be made before Rent Controller for the determination for fair rent. He further submits that the occupational charges should be paid by the occupier not from the date of filing of the appeal but from the date when he became unauthorized occupier in respect of the suit premises.

Having considered the facts and circumstances of the case, it appears that though the appeal was filed in the year 2020 by the defendant/appellant and learned court below has referred the matter to the Rent Controller by his impugned order dated 26.02.2021 for ascertainment of amount of occupational charges but fact remains that till

date the defendant/appellant's petition for stay is still pending for disposal.

In view of the above, CO 843 of 2021 is hereby disposed of with a direction upon the court below to dispose of defendant/appellant's application for stay along with objection raised by the plaintiff/respondent within a period of twelve weeks from the date of communication of the order, without being influenced by any observation made herein.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)