

D/L
Item No. 14
12.07.2023
KOLE

CO 1079 of 2023

**Susanta Sen
-Vs.-
Raahul Nathani**

*Mr. Jishnu Chowdhury,
Mr. A. Dey,
Ms. Surabhi Sarawgi,*

...for the petitioner.

*Mr. Sakya Sen,
Mr. A. Banerjee,
Mr. P. Chatterjee,
Mr. Gourab Banerjee,
Mr. S. Pal,*

...for the opposite party.

This revisional application has been filed challenging an order dated January 30, 2023 passed by the Civil Judge (Sr. Division), 2nd Court, Alipore in Title Execution No. 48 of 2022. By the order impugned, the learned Court below allowed an application under Section 151 of the Code of Civil Procedure filed by the judgment debtor, praying for stay of the execution proceedings.

Mr. Chowdhury, learned Advocate, appearing on behalf of the petitioner submits that the order suffers from various illegalities:

- (a) The learned Executing Court did not have any authority to stay the execution proceeding for an unlimited period.
- (b) The stay order could not have been passed without securing the occupational charges on the principles laid down by the Hon'ble Apex Court in the case of **Atma Ram Properties (P) Ltd. v.**

**Federal Motors (P) Ltd., reported in (2005) 1
SCC 705.**

(c) The order was wholly without jurisdiction.

Mr. Sakya Sen, learned Advocate, representing the judgment debtor submits that Order 21 Rule 26 of the Code of Civil Procedure empowers the learned Executing Court to pass orders of conditional stay of the execution proceedings.

Having considered the law and the issues involved in the revisional application, this Court is of the view that the learned Court below erred in granting an unconditional stay of the execution proceedings till disposal of the Misc. Case No. 17 of 2023, which is an application under Order 9 Rule 13 of the Code of Civil Procedure filed by the judgment debtor-defendant for setting aside the *ex parte* decree, without imposing conditions.

Hence, the revisional application is disposed of with the direction upon the judgment debtor to pay to the petitioner, occupational charges amounting to the last paid rent of Rs. 21,000/- per month, month by month, every month, within 15th day of the month. The first payment shall be made for the month of July, 2023, within the 15th of the month. The arrears on and from September, 2022 till June 2023, shall be liquidated in three consecutive equal monthly instalments. The first instalment shall be paid with the charges for the month of August, 2023. Fraction, if any, shall be paid with the last instalment.

The payments shall be made to the petitioner directly. Receipts shall be issued every month. Payment and acceptance shall be without prejudice to the rights and

contentions of the parties. The execution proceedings shall remain stayed, in case of compliance of this order in its letter and spirit, till disposal of the Misc. Case. In case of default, the execution will continue. The Misc. Case No. 17 of 2023 shall be disposed of within two months from the next date fixed.

Unlimited stay of the execution case, is not warranted. The application for setting aside the *ex parte* decree should be disposed of as directed. The stay is only to give some breathing time to the judgment debtor, to pursue his remedies, after having suffered a *ex parte* decree. The occupational charges are directed to be paid in order to compensate the decree holder who is not able to enjoy the property, which is being enjoyed by the defendant even after a decree has been passed against him.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)