

June 7, 2023
Sl. No.10
Court No.19
s.biswas

CO 1651 of 2023

Amar Nath Basu Mallick and others
vs.
Paresh Singh

Mr. Sibasis Ghosh

... for the petitioners

The petitioners have made an innocuous prayer. The petitioners are the decree holders in Title Suit No.137 of 1998. The Hon'ble High Court granted stay of the execution on the ground that Rs.5000/- be deposited as occupational charges as a pre-condition for the grant of stay. A default clause was added that in case the judgment debtor failed to deposit the occupational charges, the execution would proceed.

It is submitted by Mr. Ghosh, learned advocate for the petitioners, that the judgment debtor failed to deposit the occupational charges from September, 2011 and was enjoying the property without paying a single farthing. The decree holders now want to proceed with the execution case and take over the vacant possession of the suit property.

Mr. Ghosh further submits that by an application dated June 10, 2022, it was brought to the notice of the learned executing court i.e. the court of learned 7th Civil Judge (Junior Division), Howrah that execution case being Title Execution

Case No. 2 of 2010 should be proceeded with, as no occupational charges had been paid after August 2011. The petitioners contend that the said application has been kept pending since June 10, 2022 and the petitioners/decreed holders are being deprived of being able to ultimately enjoy the fruits of the decree.

Having gone through the order of this court passed in SAT 383 of 2009, it appears to the court that the Coordinate Bench had directed that in case of default of payment of any one of the deposit of occupation charges payable from July, 2011, the interim order of stay shall stand vacated.

Under such circumstances, this court is of the view that the learned executing court should dispose of the said application pending before the learned court within a period of two months from the date of communication of this order, on its own merits and upon contest. This is an innocuous order of expeditious disposal of an application in the execution case. No prejudice will be caused to the opposite parties if the application is disposed of upon granting an opportunity to the opposite parties to contest the same.

It is made clear that the file shall be traced immediately and if the same cannot be traced, the file should be reconstructed, so that the order of this

court is mandatorily complied with. The execution case is pending since 2010 and is dragging.

However, this court has not expressed any opinion with regard to merits of the execution case and the learned court below shall dispose of the same strictly in accordance with law.

The revisional application is thus disposed of.

A copy of this revisional application along with sever copy of this order be served upon the opposite party within a period of a week from date.

All the parties and the learned court below shall act on the basis of server copy of this order.

(Shampa Sarkar, J.)