

01.12.2023
(D/L-19)
Ct.-18
(Susanta)

C.O. 1938 of 2023

Sri Atanu Gun @ Goon
-Vs-
Sri Anjan Kumar Roy & Anr.

Mr. Susenjit Banik,
Mr. Partha Sarkar,
.... For the Petitioner.
Mr. Siva Prosad Ghose,
... For the Opposite Parties.

The petitioner has suffered an ex parte decree of eviction in title Suit No. 135 of 2020, to set aside the said decree, he has filed an application under Order IX Rule 13 of the Code of Civil Procedure before the 2nd Court of learned Civil Judge (Junior Division), Barrackpore, District 24-Parganas (North) being Misc. Case no. 08 dated January 06, 2023.

The learned Trial Judge by the order impugned dated January 06, 2023 has dismissed an application filed by the petitioner praying stay of all further proceedings of the Execution Case levied to execute the said ex parte decree of eviction.

The rejection of the said application is absolutely on a misconception of the scope of Order XXI Rule 26 of the Code as such the order impugned is not sustainable and it is accordingly set aside. However, to enjoy an order of stay as

prayed for, the petitioner is required to pay occupational charges.

Considering the location of the suit property the occupation charges is fixed @ Rs. 2000/- per month.

The petitioner shall deposit the occupational charges at the said rate with the executing Court from the date of decree, arrear occupational charges are to be liquidated by twelve equal monthly installments.

The current occupational charges shall be deposited within seventh of each succeeding month for which it falls due, first of such deposit shall be made by January 07, 2024.

There shall be an unconditional stay of all further proceedings of Title Execution Case no. 13 of 2021 pending before the 2nd Court of learned Civil Judge (Junior Division), Barrackpore, District-24 Parganas (North) till the end of the month of January 2024 and in the event the petitioner makes the aforementioned deposits, the interim order shall continue till the disposal of the said Misc. Case no. 15 of 2021 but in default of any of the deposits mentioned above, the interim order shall automatically stand vacated and the decree shall be executable at once.

The learned Trial Judge is requested to expedite the disposal of the said Misc. Case

without granting any unnecessary adjournment to either of the parties.

C.O. 1938 of 2023 is disposed of with the above terms without any order as to costs. .

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)