

July 28, 2023
Sl. No.12
Court No.19
s.biswas

CO 2972 of 2022

Dr. Chandra Sekhar Murmu

vs.

Nripendra Narayan Ghosh

Ms. Sumana Sinha

... for the petitioner

Mr. Debasish Roy

Mr. Souvik Ghosh

... for the opposite party

The petitioner does not want to proceed with the matter as submitted by Ms. Sinha, learned advocate for the petitioner.

It appears that the revisional application had been filed challenging an order by which an application for modification of the order dated March 28, 2022 had been disposed of by the learned lower appellate court, without allowing the judgment debtor extension of time to pay the occupational charges.

Mr. Roy, learned advocate for the opposite party vehemently contends that by indicating pendency of this revisional application, the execution proceeding had been inordinately delayed. Moreover, occupational charges, as directed by the learned court below, have not been paid. The conditional order of stay stood automatically vacated and the execution should proceed.

This court finds that the petitioner's challenge to the order passed by the learned Additional District

Judge, 7th Court, Alipore, South 24 Parganas, granting stay of the execution proceedings, subject to payment of occupational charges is being consciously abandoned by the petitioner, by not proceeding with this revisional application.

Thus, order of the learned lower appellate court survives and the stay stands automatically vacated. The learned executing court can proceed within the execution, unless the learned lower appellate court passes further orders in the appeal, at the behest of either of the parties.

Considering that rights had accrued in favour of the opposite party on the passing of the decree and to receive occupational charges, as also the delay caused due to pendency of the revisional application, the executing court must be directed to expedite the execution. The execution court shall proceed in accordance with law.

The revisional application is dismissed as withdrawn.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)