

02.02.2023
Item No.7
Ct. No.7
CHC
(disposed of)

C.O. 3948 of 2022

**Maya Dasd & anr.
Vs.
Tollygunge Bejoyee Sangha**

Mr. Chayan Gupta,
Mr. Sounak Bhattacharya,
Mr. Rittick Chowdhury,
Mr. Sounak Mandal

...for the petitioners

Mr. Gupta, learned advocate being assisted by Mr. Bhattacharya, learned advocate representing petitioners, while assailing the impugned orders dated 9th September and 5th/10th November, 2022, passed by learned Civil Judge (Junior Division), 1st Court, at Alipore, South 24 Parganas in Title Execution Case No.20 of 2017, arising out of Title Suit No.1541 of 2008, submits that there has been a conditional order of stay of execution of the decree till disposal of the appeal passed in Title Appeal No.12 of 2017 with a direction upon the judgement-debtor/appellant/opposite party to make conditional deposit of Rs.25,000/- per month, as occupational charges in the court below with effect from the month of September, 2017, failure of which, the stay of execution shall stand automatically vacated, but the

court below in an application under Section 47 of C.P.C. filed by the opposite party has proceeded to grant stay regarding issuance of writ, being oblivious of the failure of the opposite party/judgement-debtor to ensure compliance of the order of appellate court, by making deposit of occupational charges month by month, as already ordered by the appellate court.

Mr. Gupta further submits that the stay of execution ought not to have been granted keeping in mind the failure of the opposite party to comply with the order of the appellate court. The execution proceeding, according to the petitioners, is getting delayed by reason of application u/s 47 C.P.C. being filed, with an order of stay granted by the executing court below. A direction is thus proposed by the petitioners so that the pending application under Section 47 C.P.C. registered as Misc. Case No.84 of 2022 may be disposed of with utmost expedition.

In view of the nature of order proposed to be made at this stage, no prior notice is considered to be necessary.

Service upon the opposite party stands dispensed with.

Accordingly, learned Civil Judge (Senior Division), 1st Court, at Alipore, South 24 Parganas, in Title Execution Case No.20 of 2017, is requested to ensure

expeditious disposal of Misc. Case No.84 of 2022, under Section 47 C.P.C., providing sufficient opportunity of hearing to either of the parties to this case, subject to the suitability and convenience of the court below, but without granting any unnecessary adjournment, unless it is extremely unavoidable, preferably before the end of summer vacation of the court below for the year 2023.

Since the court below has taken into account the quantum of the occupational charges granted by the appellate court, while granting stay on the prayer of the opposite party, it is thus clarified that occupational charges at the rate, as assessed by the court below may be deposited with effect from the month of September, 2017, as already passed in Title Appeal No.12 of 2017 of learned Additional District Judge, 3rd Court, Alipore.

With this observation/direction, the revisional application stands disposed of.

Petitioners are directed to make communication of this order to the learned court below as well as to the opposite party and his learned advocate in the court below.

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

(Subhasis Dasgupta, J.)