

16.04.2024
Sl. No.28
Ct. 19
sayandeep

CO 447 of 2024
Smt. Nandini Chanda
Vs.
Smt. Gopa Dutta & ors.

Mr. Rajdeep Bhattacharyya
Mr. Debashis Banerjee
...for the petitioner

1. The revisional application arises out of an order dated June 17, 2024 passed by the learned District Judge, Alipore, South 24 Parganas in Title appeal No. 1 of 2024.
2. By the impugned order, the learned appellate Court stayed the operation of the Judgment and decree dated November 22, 2023 for a period of 12 weeks. The matter was assigned to another court. It is submitted that thereafter the stay has been extended from time to time.
3. Mr. Bhattacharyya, learned advocate for the decree holder submits that when a decree of eviction is stayed, the decree holder is deprived from enjoying the fruits of the decree. On the principle laid down by the Hon'ble Apex Court in ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd. reported in (2005) 1 SCC 705***, the defendant, who was enjoying the suit

property after having suffered an eviction decree, was to compensate the decree holder by payment of occupational charges.

4. Mr. Bhattacharyya draws the attention of the Court to the objection filed in respect of the application for stay and submits that categorical statements had been made with regard to the area under occupation, the market rent which the occupied tenanted property would fetch etc. The learned Judge failed to take into consideration such objections and granted a blanket stay without fixing any liability on the judgment debtor to pay occupational charges.
5. I find from the order impugned that stay was granted for 12 weeks or until disposal of the appeal, whichever was earlier. It is submitted by Mr. Bhattacharyya that the appeal has not yet been disposed of. The *ad interim* order has been extended from time to time.
6. It is submitted that the Title Appeal No. 1 of 2024 has been transferred to the Court of Additional District Judge, 14th Court, Alipore, South 24 Parganas.
7. Considering the submission of Mr. Bhattacharyya, this Court is of the view that

a specific application with such contentions should be filed before the learned Court which is in seision of the title appeal. The appellant shall be entitled to file objection to the same and the learned Court shall decide the issue of occupational charges as claimed by the petitioner-decree holder in accordance with law, including the question whether such occupational charges should be levied on the judgment debtor under the facts and circumstances of the case. This is a suit for eviction of a licensee. If the application is filed, the same shall be disposed of within two months from its filing.

8. The revisional application stands disposed of accordingly.
9. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)