

Ct. 18.01
No. 2024
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C.O. 823 of 2019
Uma Chakraborty @ Uma Chakravarty
-Versus-
Sri Biraj Kumar Dutta

With

C.O. 427 of 2020
Sri Biraj Kumar Dutta
-Versus-
Uma Chakraborty @ Uma Chakravarty

Mr. Debanik Banerjee	
Mr. Shibasish Banerjee	
Mr. Akash Ganguly	...For the Petitioner
	in C.O. 823 of 2019 and
	for the Opposite Party
	in C.O. 427 of 2020
Mr. Partha Pratim Roy	
Ms. Poulami Chakrabarty	...For the Opposite Party
	in C.O. 823 of 2019 and
	for the Petitioner
	in C.O. 427 of 2020

This is an application under Article 227 of the Constitution of India which has been preferred against order dated 14th February, 2019 passed by the learned Additional District Judge, 14th Court, Alipore, in R.C. Appeal No. 2 of 2018.

Petitioner contended that opposite party as plaintiff filed a suit seeking inter alia for eviction and recovery of Khas possession against the petitioner herein, which was decreed on contest in favour of the plaintiff by the learned Court below vide judgment and decree dated 28th February, 2017, wherein the petitioner herein was directed to deliver vacant physical possession of the suit property to the plaintiff within 90 (Ninety) days from that date, failing which the opposite party/plaintiff was granted liberty to put

the decree in execution in accordance with law. Further leave was granted to the plaintiff to take recourse of law for realization of arrear rent to the tune of Rs. 2,64,740/- from the defendant.

Mr. Debanik Banerjee, learned Counsel appearing on behalf of the petitioner contended that on the date on which the suit was allegedly decreed in favour of the opposite party/plaintiff herein, none of the parties were represented in the Court below and the learned Judge arbitrarily closed the evidence of the petitioner herein and unreasonably disposed of the suit.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 28th February, 2017, the petitioner herein preferred the aforesaid appeal along with two applications, one for condonation of delay in filing appeal and the other for stay of any execution proceedings in connection with judgment and decree dated 28th February, 2017.

The Appellate Court below was pleased to condone the delay in filing the appeal. But while he had taken up the petitioner's application under Section 151 of the Code of Civil Procedure, 1908 seeking stay of execution proceeding in connection with the judgment and decree passed by the Trial Court, pending hearing of the stay application he was

pleased to direct the petitioner to deposit all occupational charges, if any, upto the month of December, 2018 before Executing Court by March 15, 2019 and was further pleased to direct the petitioner to deposit Rs. 10,000/- per month on and from January, 2019 and also for the months of February and March, 2019 by 7th March, 2019 as a condition for passing stay order in respect of R.C. Execution Case No. 4 of 2018 and fixed on March 30, 2014 for disposal of stay application.

Being aggrieved by that order Mr. Banerjee submits that the rate of rent of the suit premises is only Rs. 800/- but the occupational charges has been directed to be paid by the Court below amounting to Rs. 10,000/- per month which is not only arbitrary but also excessive and as such the said order is not sustainable in the eye of law and accordingly he has prayed for setting aside the order impugned.

Mr. Partha Pratim Roy, learned Counsel appearing on behalf of the opposite party in C.O. 823 of 2019 and petitioner in C.O. 427 of 2020, submits that the Court below has not disposed of the stay application as yet. He further submits that while the stay application was taken up for hearing, the petitioner herein had given consent for payment of Rs. 10,000/- per month towards occupational charges,

which has been clearly recorded in the order impugned and as such interference by this Court invoking jurisdiction Article 227 of the Constitution of India in the present context does not arise and accordingly he has prayed for dismissal of C.O. 823 of 2019 and in connection with C.O. 427 of 2020 he submits that the stay application which is pending for a considerable period of time for disposal, may be directed to be disposed of within a time frame and the Appellate Court may further be directed to dispose of the appeal within a time bound programme.

I have considered the submissions made on behalf of both the parties and on perusal of the order impugned dated 14th February, 2019 it appears that the learned Appellate Court clearly recorded :

“At this stage, learned Advocate for the petitioner/appellant also proposed to pay occupational charges at the rate of Rs. 10,000/- per month. Learned Advocate for the respondent/decreed holder did not raise any objection regarding the proposed occupational charges to be paid to be respondent/decreed holder”.

In such view of the matter when the aforesaid order was passed on consent of the parties, I find nothing to interfere with the order impugned.

Accordingly, C.O. 823 of 2019 is hereby dismissed.

Learned Court below is directed to dispose of the stay application filed by the appellant/petitioner herein within a period of three months from the date of communication of this order and the learned Court below is further directed to make every endeavour that the appeal, being R.C. Appeal No. 2 of 2018 be disposed of preferably within a period of 6 (Six) months from the date of communication of this order.

Accordingly, C.O. 427 is also disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)