

February 28, 2024
Sl. No. 7
Court No.19
s.biswas

CO 766 of 2022

Park Street Properties (P) Ltd.

vs.

Swapan Ghosh

Mr. Tanmoy Mukherjee
Mr. Neelesh Choudhury
Ms. Anuradha Podder
Mr. Soumava Santra

... for the petitioner

1. The affidavit of service is taken on record. None appears to oppose the application. The affidavit of service at the first instance, records that the opposite party had been served with the copy of the revisional application, but the learned advocate for the opposite party had refused service. Again, service was directed and it is found that notice was delivered to the opposite party as also to the learned advocate. Again, none appears to contest the revisional application.
2. The revisional application arises out of an order dated March 15, 2022 passed by the learned Chief-Judge-in-Charge, City Civil Court at Calcutta in Misc. Appeal No.06 of 2022, thereby reversing the order dated January 27, 2022 passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta in Misc. Case No.01 of 2022, which was filed in connection with Ejectment Execution Case No.1342 of 2014.

3. The petitioner got a decree of eviction, inter alia, on the ground of reasonable requirement on June 3, 2014. The decree was challenged in the proceedings under Order 9 Rule 13 of the Code of Civil Procedure by the opposite party.
4. Such application was rejected on the ground that the opposite party was not a tenant, but a third party and as such the application under Order 9 Rule 13 of the Code of Civil Procedure was not maintainable at his instance.
5. Thereafter, the application under Order 21 Rules 99 to 101 of the Code of Civil Procedure was filed by the opposite party, which was registered as Misc. Case No.01 of 2022. Misc. Case No.01 of 2022 was rejected by the learned Executing Court, inter alia, holding that the opposite party had failed to prove any right of tenancy in respect of the property in question and the documents which were filed by the opposite party in respect of his claim were found to be forged and fabricated. The learned court also granted liberty to the petitioner/decreed holder to approach the police authorities and file a complaint with regard to the allegation of forgery, falsification of the documents, etc.
6. Such order was challenged by the opposite party in Misc. Appeal No.06 of 2022. Along with the said misc. appeal, an application for stay of

operation of the execution case as also the operation of order by which the decree holder was granted police help to put the decree into execution, was filed.

7. The learned appellate court entertained the appeal and admitted the same and stayed the execution proceedings, without any order for payment of occupational charges. Hence, the revisional application has been filed on the ground that the person in occupation of the premises in question ought to have been directed to pay occupational charges. The decree holder has been denied the right to reap the benefit of the decree from 2014 and is entitled to occupational charges.
8. The revisional application was served upon the opposite party on a number of occasions, but he did not appear.
9. This court does not find that any useful purpose will be served in keeping the application pending. The opposite party has no interest in contesting the revisional application.
10. This court is of the view that once the misc. appeal had been admitted, the execution proceedings ought to be stayed, otherwise the misc. appeal will become infructuous. However, stay of the execution amounts to denial of the right to the decree holder to enjoy his property,

which he was entitled to recover by virtue of the decree which was passed in 2014. Stay should be conditional. It is well-settled that the principles laid down in ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.***, reported in ***(2005) 1 SCC 705***, will be applicable in this case as well, as the opposite party is resisting the eviction and resisting the execution of the decree of eviction. He has to pay and stay. The payment will be at the current market rent which the property is likely to fetch.

11. Under such circumstances, in the absence of the opposite party and in the absence of the evidence as to what would be the market rent such the property would fetch, this court is unable to fix the occupational charges in this proceeding.
12. The order impugned is set aside only with regard to the grant of the blanket stay, without any condition for payment of occupational charges. The part of the order by which the appeal was admitted for hearing, shall remain.
13. The decree holder shall file an application claiming occupational charges with proper particulars, within a week from date. The application shall be disposed of by the learned court upon contested hearing. The quantum of the occupational charges shall be decided. The same shall be payable from the date of the

decree. The execution shall remain stayed till disposal of the application to be filed by the petitioner.

14. Stay shall continue subject to the condition that the occupational charges fixed by the court is paid by the opposite party, without fail. The petitioner shall file the application, upon notice to the opposite party and the learned advocate for the opposite party in the learned court below. The opposite party will file the objection within 10 days from receipt of the copy. The learned court below shall decide the quantum of occupational charge and dispose of the application preferably within one month from date, but not later than two months. Thereafter, the misc. appeal shall be proceeded with in accordance with law and the same shall be expedited.
15. The revisional application is disposed of accordingly.
16. All the parties are directed to act on the basis of the server copy of the order.
17. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)