

01.10.2024
Item No.34, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 1380 of 2024

**Niharendu Saha
-Vs-
Debjani Guray**

Mr. Subir Banerjee,
Mr. Indrajit Sen,
Mr. S. Medda.
.....for the petitioner.

Mr. Sounak Bhattacharya,
Mr. S. Pal Choudhury.
.....for the opposite party.

Affidavit of service filed on behalf of the petitioner
be kept with the record.

The matter though has been brought to the list at
the instance of the petitioner for extension of interim order
but, by the consent of the parties, it is taken up for final
disposal.

The petitioner has suffered an *ex parte* decree of
eviction in *Ejectment Suit No. 95 of 2012*. He had applied for
setting aside of the said *ex parte* decree registered as *Misc.
Case No. 56 of 2018*. The said Misc. Case was dismissed vide
judgment and order dated January 06, 2024.

Aggrieved by the said judgment and order, the
petitioner has preferred the connected *Misc. Appeal No.8 of
2024* which is pending before the 1st Court of the learned
Additional District Judge at Sealdah, District: 24-Parganas
(South).

The decree in the meantime has been put into
execution giving rise to *Ejectment Execution Case No. 10 of
2017* before the 1st Court of the learned Civil Judge (Junior
Division) at Sealdah, District: 24 Parganas (South).

The Appeal Court below by the order impugned dated January 31, 2024 has allowed the prayer of the petitioner for stay of further proceeding of the said execution case, subject to deposit of Rs.8,000/- (Rupees Eight Thousand only) per month before the Executing Court towards occupational charges.

A part of the suit property, due to rain, has collapsed; the petitioner is alleging that only two rooms the suit property are habitable.

Considering the said aspects, the amount of occupational charges is reduced to **Rs.6,000/- (Rupees Six Thousand only)** per month.

The petitioner, however, instead of depositing the said occupational charges with the Executing Court, shall pay it within the 7th of each succeeding month for which it falls due to the opposite party in her bank account, details of which are to be furnished by her to the leaned advocate for the petitioner; the arrear amount, if any, be also paid to the opposite party.

The opposite party however is required to furnish an undertaking before the Executing Court that in the event, the petitioner succeeds in the pending appeal, she would refund the amount received by her on account of such occupational charges.

The petitioner shall withdraw the occupational charges already deposited with the Executing Court and shall pay the same to the opposite party.

In the event the payment as directed above is made within the stipulated time, the further proceedings of the said Execution Case shall remain stayed till the disposal of the connected Misc. Appeal; in default of any of such

payment(s), the said order of stay shall stand automatically vacated and the decree would be executable at once.

The Appeal Court is requested to make all endeavour for expeditious disposal of the said Miscellaneous Appeal in accordance with law.

C.O. 1380 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)