

Item No.29
24.04.2024
Court. No. 19
GB

C.O. 1392 of 2024

Smt. Swapna Saha Chowdhury & Ors.

Vs.

Shri Dhiman Bhattacharya

Mr. Soumyajit Mukherjee

...for the Petitioners.

Mr. Saptansu Basu

...for the Opposite Party.

1. The revisional application arises out of an order dated January 11, 2024, passed by the learned Civil Judge (Junior Division), Bidhannagar, District- 24 Parganas (North) in Title Execution Case No.05 of 2022 arising out of Title Suit No.257 of 2007.
2. By the order impugned, the learned court, inter alia, held that the petitioners had defaulted in payment of the occupational charges of Rs.7,000/- per month for eight months. Invoking the default clause passed in the earlier order the court directed that the execution case must proceed as the stay was vacated.
3. Mr. Mukherjee, learned advocate appearing on behalf of the petitioners submits that the money was subsequently deposited.
4. Mr. Basu, learned senior advocate appearing on behalf of the opposite party submits that subsequent deposit of the dues would not correct the wrong which was already committed and as a result of which the stay of the execution stood automatically vacated. Mr. Basu further raises a question as to whether the court should interfere

under Article 227 of the Constitution of India when the learned court did not commit any error and had implemented his own order.

5. It is submitted that the learned judge had no other option but to implement his own order in which it was specifically mentioned that failure to pay the occupational charges would result in continuation of the execution case and the stay would stand vacated.
6. Mr. Basu draws the attention of the Court to the admission made by the petitioners that they had defaulted in payment.
7. I agree with the contention of Mr. Basu to the extent that the learned court had not passed any perverse order. However, power under Article 227 of the Constitution of India can be exercised to do substantial justice. For the ends of justice, this Court is invoking the superintending power as hypertechnicality will render the entire effort of the petitioners to be an exercise in futility.
8. Under such circumstances, when the tenants have acted bona fide and deposited the entire dues, the execution case shall remain stayed and the order of the learned Civil Judge (Junior Division), Bidhannagar, District – 24 Parganas (North) is set aside. The order dated April 1, 2023 revives. The learned court is directed to make a sincere endeavour to dispose of the misc. case preferably within a month from the next date fixed.

9. It is made clear that failure to deposit the occupational charges for a single month, shall result in automatic termination of the order of stay of execution and the learned court shall proceed with the execution case without further reference to the parties.
10. Accordingly, the revisional application is disposed of.
11. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)