

26.04.2024
Ct. No. 19
Sl. No.01
Cp

C.O. No. 1560 of 2024

Sri Atul Gupta
Vs.
Sri Ajoy Kumar Sinha

Mr. Debjit Mukherjee
Mr. Anirban Pal

... for the Petitioner.

Mr. Debasis Roy
Mr. Kousik Dey

...for the Opposite Party.

The revisional application arises out of an order dated March 21, 2024 by which an application under Order 21 Rule 97 of the Code of Civil Procedure was allowed by the learned Executing Court in Misc. Case No. 03 of 2023 arising out of Title Execution Case No. 11 of 2019. The Ejectment Suit No. 984 of 2000 was decreed on April 26, 2018. Title Appeal No.55 of 2018 was filed. The appeal was dismissed on June 30, 2022. A Second Appeal was preferred before this court which is yet to be admitted under Order 41 Rule 11 of the Code of Civil Procedure.

It appears from the records that the petitioner did not take adequate steps for getting the appeal admitted and the stay of the execution ought to have prayed for in the second appeal itself, subject to admission by an Hon'ble Division Bench.

There are specific allegations that the learned court had preponed the dates without any notice to the petitioner. The petitioner was unable to attend the court on the dates

fixed and also failed to cross-examine the bailiff. Also, on the final day when the order impugned was passed, the petitioner was not available.

This court is not inclined to go into the merits of the order as the learned court has elaborately dealt with the Misc. Case and passed necessary orders. Admittedly, the petitioner was unsuccessful in the trial court and the appellate court. Thus, justice would be subserved if the order impugned is stayed for seven days to enable the petitioner to take his chance before a Hon'ble Division Bench with regard to admission of the appeal. It has also been submitted that the Hon'ble Division Bench has not been available this week.

The order impugned will revive upon expiry of the period of seven days. Mr. Roy's contention that the petitioner was avoiding to move the second appeal as the petitioner did not have a good prima facie case, is not taken into account in this proceeding. Mr. Roy may make necessary submissions before the Hon'ble Division Bench. However, one last opportunity is given to the petitioner in view of the circumstances as mentioned above.

The revisional application is accordingly disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)