

11.03.2024
Sl. No.18(DL)
srm

C.O. No. 3026 of 2023

Santosh Singh & Ors.

Versus

Dinesh Kumar Soni

Mr. Susovan Sengupta,
Mr. Abhishek Verma,
Mr. Ritabrata Singha Roy

...for the Petitioners.

Mr. Kushal Chatterjee,
Mr. Debrup Chowdhury

...for the Opposite Party.

1. The revisional application arises out of an order dated August 2, 2023 passed by the learned Additional District Judge, Fast Track, 1st Court at Barrackpore, North 24-Parganas, in Title Appeal No.18 of 2023.
2. By the order impugned, the learned appellate court rejected an application for stay, *inter alia*, holding that there was no scope to pass an order of stay of the decree passed by the learned trial Judge. Instead, the appeal should be disposed of on its merit.
3. Mr. Sengupta, learned Advocate for the petitioner appears before this Court and submits that the order is a non-speaking order. The learned appellate court during the pendency of the appeal ought to have

given some protection to the judgment-debtor. More so, because the other suits with regard to the property involved including the suit for eviction is pending and trial was going on. The property involved in the appeal is a part of the tenanted property.

4. Mr. Chatterjee, learned Advocate appearing on behalf of the decree-holder submits that the learned court had no other option, but to reject the said application as the question of stay of the decree would not arise.
5. Having heard learned Advocates for the respective parties and especially because it is the specific submission of the judgement-debtor that taking advantage of the decree and the refusal to stay the decree, a padlock has been affixed by the landlord, this Court is of the view that a specific application to that effect with mandatory prayers for breaking open the padlock and restoration of possession should be filed before the learned appellate court, which the learned court shall decide on its merits and in accordance with law on the basis of evidence that shall be put-forth by the parties.

6. The application shall be filed within a week from date.

The learned court shall dispose of the same within two months from date.
7. The learned court shall specifically consider the allegation that a padlock had been affixed taking advantage of a decree from which an appeal is pending and the court had fixed the appeal for hearing. The allegation must be decided on the facts and circumstances especially as an eviction suit is pending.
8. The revisional application is, thus, disposed of.
9. There shall be no order as to costs.
10. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)