

03.04.2024
Item No.25
Ct. No. 7
KS

C.O. 3499 of 2023
With
IA No. CAN 1 of 2023
Sri Netai Nandi
Versus
Sri Shibnath Kundu

Mr. Manik Lal Poddar
Ms. Sipra Chanda
.....For the Petitioner
Mr. T. Mukherjee
Mr. Souvik Das
Mr. Soumava Santra
Mr. K. R. Ahmed
.....For the opposite party

1. The tenant/appellant has filed this revisional application under Article 227 of the Constitution of India challenging Order No.3 dated 24th August, 2023 passed by the learned District Judge, Howrah in Title Appeal No.87 of 2023.
2. By the order impugned, the learned District Judge, Howrah directed the stay application to be heard along with the appeal.
3. Mr. Poddar, learned advocate appearing for the petitioner submits that in the meantime, the decree has been put into execution giving rise to Title Execution Case No.108 of 2023 pending before the learned Civil Judge (Junior Division), 7th Court at Howrah. He further submits that the title appeal will become infructuous unless an order of stay of all further proceedings of title execution case is passed.
4. Mr. Mukherjee, learned advocate appearing for the landlord/opposite party herein submits that the hearing of

the appeal may be expedited. He submits that in the meantime the Title Appeal No.87 of 2023 has been transferred to the Court of the learned Additional District Judge, Fast Track Court – 3, Howrah and the Lower Court Records have already arrived before such Court.

5. Since an appeal under Section 96 of the Code of Civil Procedure has been filed, the same has to be decided on its merit. In the event, the decree is executed during the pendency of the appeal, the said appeal will become infructuous. Disposal of the appeal will take sometime. The decree holder will be deprived from enjoying the fruits of the decree if the execution case is stayed. For such reason, the decree holder has to be compensated for which the appellant/petitioner herein should be directed to pay occupational charges to the opposite party at the current market rate during the pendency of the appeal.
6. Mr. Poddar, learned advocate volunteered that the petitioner will pay a sum of Rs.500/- per month on account of occupational charges to the opposite party from the date of filing of the appeal and Mr. Mukherjee also did not raise any objection with regard to the amount of occupational charges which the petitioner is willing to pay during the pendency of the appeal. Title Execution Case No.108 of 2023 pending before the learned Civil Judge, (Junior Division), 7th Court at Howrah shall remain stayed till the disposal of Title Appeal No.87 of 2023 pending before the learned Additional District Judge, Fast Track Court No.3, Howrah subject to deposit of occupation charges in the manner as directed hereinafter.
7. This Court directs the petitioner herein to pay occupational charges to the opposite party herein at the rate of Rs.500/- per month with effect from the date of

filing of the title appeal till the disposal of the said appeal. The arrear occupational charges from the date of filing of the appeal till the month of March, 2024 shall be paid in three equal monthly installments; the first of which shall be paid on or before April 15, 2024 and the next two installments within the 15th day of each succeeding English calender month. The current occupational charges commencing from the month of April, 2024 shall be paid on or before the 15th day of May, 2024 and thereafter within 15th of each English calender months.

8. The learned Additional District Judge, Fast Track Court - 3, Howrah is requested to dispose of T.A. 87 of 2023 as expeditiously as possible without granting any unnecessary adjournments to the parties preferably on or before December, 2024.
9. With the above observations/directions, C.O. 3499 of 2023 stands disposed of.
10. There shall be, however, no order as to costs.
11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)