

13.12.2024
Item No.
AD 7
Saswata

C.O. 3958 of 2024

**Mita Kaul
versus
Parvez Ahmed & Ors.**

Mr. Syed Nurul Arefin
Ms. Rashmi Binayak
Ms. S.M.Arefin
Mr. Sanju Agarwal

...For the petitioner

Mr. Partha Pratim Roy
Mr. A.M.Sabir
Mr. D.Banerjee

...For the opposite party nos. 1 and 2

1. Challenging the order dated 4th November 2024, passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Misc. Case No. 68 of 2019 arising out of Ejectment Suit No. 43 of 2019, the instant revisional application has been filed.

2. At the very outset, Mr. Arefin, learned advocate appearing for the petitioner would submit that the petitioner had suffered an ex parte decree in Ejectment Suit no. 43 of 2016. According to him, such decree was passed without service of summons. Challenging such decree an application under Order IX Rule 13 of the Code of Civil Procedure 1908 (hereinafter referred to as the Code) has been filed.

3. In the aforesaid application filed under Order IX Rule 13 of the Code of Civil Procedure, the Learned Court by order dated 29th August 2024 had directed the petitioner to make payment of occupational charges. Such payment has been made condition precedent for enjoying the stay order.

4. Mr. Arefin submits that although, the petitioner had been complying with such order, as would appear from the challan issued by the Treasury Officer, however, there had been certain defaults due to technical difficulties. The Learned Judge, without taking note of the financial constraints of the petitioner and the difficulties faced and without giving opportunity to the petitioner

to make payment of the arrears by way of installments, has by order dated 4th November 2024 rejected the petition filed by the petitioner for acceptance of the deposit by reasons of non-compliance of the direction of deposit of the arrear amount.

5. Mr. Arefin submits that his client was all along ready and willing to comply with the aforesaid order as regards payment of occupational charges without prejudice to the rights and contentions of his client in the pending revisional application being CO no. 3600 of 2024. Unfortunately, since there had been technical difficulties in the deposit, the entire deposit could not be made. As such, he seeks some more time to make payment.

6. Mr. Roy, learned advocate enters appearance on behalf of the opposite party nos. 1 and 2, he submits that no indulgence should be shown to the petitioner. He opposes the prayer for acceptance of the deposit at this belated stage.

7. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that by an order dated 29th August 2024 passed by the Learned Civil Judge (Junior Division), 2nd Court at Sealdah in Misc. Case no. 68 of 2019 arising out of Ejectment Suit no. 43 of 2016, the petitioner was directed to make payment of the occupational charges at the rate of 8,000/- from the date of the decree, with a direction to clear the arrears till August 2024 by November, 2024, with a default clause and the petitioner having failed to comply with such direction, the learned Judge by the order impugned by observing that there is no impediment to proceed with the execution, had thereby rejected the application for acceptance of the deposit. Although, there appears to be no irregularity in the order, however, considering the fact that the application for recall of the *ex parte* decree is pending, I am of the view that the petitioner, should be given one further opportunity to make payment of the entire arrear along with the current deposit.

8. Having regard thereto, I direct the petitioner to deposit/make payment of the entire arrear along with the current payment, and by taking note of the difficulty faced by the petitioner, let such payment be made directly to the bank account of the opposite party no. 1, particulars whereof shall be supplied by the Learned Advocate on Record of the opposite parties to the Learned Advocate on Record of the petitioner in course of this day.

9. The entire payment as regards arrear along with the current payment for the month of December 2024 should be cleared on or before 31st December 2024 and all subsequent payments for the subsequent months should be cleared on or before the 15th of each following English calendar month. The aforesaid payment shall be made without prejudice to the rights and contentions of the petitioner in the pending revisional application. In default of payment by 31st December, 2024 or in default of payment of occupational charges for any one subsequent month the stay of execution of the decree shall stand vacated.

10. Since nothing survives to be decided in the application and since, both the parties agree that the aforesaid revisional application can be disposed, I dispose of the instant revisional application being CO 3958 of 2024 on the basis of the aforesaid direction.

11. Urgent Photostat certified copy of this order, if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)