

24.12.2025
SL No.5
Court No.6
(gc)

CO 2366 of 2025

Shyamal Chandra Das
Vs.
Bidhan Chandra Roy & Ors.

Mr. Siva Prasad Ghose,
Mr. Sujit Sahoo

.....for the Petitioner.

Mr. Debashis Roy

...for the Opposite Parties.

1. The petitioner is aggrieved by an order dated June 13, 2025 passed by the learned Additional District Judge, 1st Court at Barrackpore in Title Appeal No.40 of 2024. An eviction suit was decreed on May 16, 2024 by the learned Civil Judge (Junior Division), 1st Court, Barrackpore. Title Appeal No.40 of 2024 was preferred by the judgment-debtor. Upon apprehending that title execution case would be filed by the decree-holder, an application for stay was filed before the learned Appeal Court. The decree-holder also filed an application for payment of occupational charges, in the event an order of stay is passed. The Court found that the defendants were defaulters and did not deposit the arrear rent. The defence had been struck off. That the defendants had deliberately not paid the rent in terms of the order of the learned Trial Court. They were

trying to linger the suit. Thus, the prayer for stay was rejected.

2. The application for payment of occupational charges filed by the decree-holder was kept for hearing.
3. The learned Court misdirected itself in rejecting the application for stay on the ground that, the defendants were defaulters and by filing the application for stay, the defendants were deliberately lingering the suit. The suit has already been decreed. The Title Appeal was preferred. Whether the defendants were rightly found to be defaulters is an issue which will be decided in the appeal. However, the appeal will become infructuous if the decree is executed. Thus, the prayer for stay was made. The law is well-settled that, such stay can only be granted in case of an eviction decree, if the occupational charges at the market rate are paid.
4. Thus, this Court is of the view that the order impugned should be set aside and it is, accordingly, set aside.
5. The learned Appeal Court is directed to hear the application for stay of the Title Appeal along with the application for payment of occupational charges filed by the decree-holder and pass necessary orders.
6. The petitioner will deposit a further sum of Rs.10,000/- before the learned Executing Court, over

and above, the amount already deposited by direction of the Coordinate Bench. Such amount shall be adjusted with the occupational charges that shall be directed by the Court to be paid as a condition for grant of stay, upon disposal of the application.

7. Question of monthly occupational charges will be decided by the learned Court, upon hearing the parties in the pending application.
8. Till the decision is taken by the learned Appeal Court, there shall be status quo with regard to the possession of the property in question.
9. As the decree-holder has been suffering, the learned Court is directed to dispose of all the proceedings expeditiously.
10. Accordingly, the revisional application is disposed of.
11. There shall be no order as to costs.
12. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)