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10.03.2025  
Court No.6  
BP

C.O. 2663 of 2024

Shree Ganesh Jute Mills Pvt. Ltd.  
-versus-  
Ferro Metal Industries & Anr.

Mr. Haradhan Banerjee, Sr. Advocate  
Mr. Amitava Pain  
Mr. P.P. Mukhopadhyay  
... for the petitioner

Mr. Aniruddha Chatterjee  
Mr. Ayan Banerjee  
Mr. Dev Kumar Sharma  
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the decree holder and is directed against an order no.4 dated 22<sup>nd</sup> February, 2024 passed by the learned Additional District Judge, Fast Track Court No.II at Howrah in Misc. Appeal No. 24 of 2024 arising out of Misc. Case No. 14 of 2023.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the learned judge of the 1<sup>st</sup> Appellate Court without taking into consideration the fact that the petitioner is entitled to occupation charges as the condition for grant of stay of the execution case passed an order of stay of all further proceedings of the

execution case on condition that no adjournment shall be granted to the appellant.

Mr. Chatterjee, learned senior advocate appearing for the opposite parties submits that the learned judge of the 1<sup>st</sup> Appellate Court imposed a condition to the effect that the opposite parties/appellants in miscellaneous appeal shall not be allowed to take adjournment as the condition for stay of all further proceedings of the execution case.

Record reveals that by judgment and decree dated June 20, 2003 passed in five suits which were heard analogously, the petitioner herein got a decree for declaration that they are the owner of the suit premises and are entitled to recover arrears of rent and mesne profit from the defendant. The petitioner herein also got a decree for vacant possession of the suit premises by evicting the defendant there from. The petitioner also got a decree on account of arrears of rent for the period from March, 1957 to July, 1981 against the defendant. The petitioner herein got a further decree for mesne profit @ Rs. 2000/- per month from 1<sup>st</sup> August, 1981 till the date of vacant possession of the suit premises against the defendant on payment of the required court fees payable on the amount due in accordance with law.

The said decree was put into execution before the learned Civil Judge (Senior Division), 1<sup>st</sup> Court at Howrah giving rise to title execution case no. 5 of 2011.

The opposite parties herein filed a Misc. Case no. 16 of 2023 under Order 21 Rules 97, 98, 99, 100 and 101 read with Section 151 of the Code of Civil Procedure praying for adjudication of the questions relating to right, title, interest and possession of the petitioner in respect of the lease hold property being part and/or portion of the decreetal property being holding no.27, Nityadhan Mukherjee road within Police Station and District Howrah. The said misc. case was dismissed by an order dated February 13, 2024. Challenging the order dated February 13, 2024 passed by the learned Civil Judge (Junior Division), 1<sup>st</sup> Court at Howrah in Misc Case No. 16 of 2023 arising out of Title Execution Case No. 5 of 2011 the opposite parties herein preferred an appeal being Misc. Appeal No. 24 of 2024. In the said miscellaneous appeal the opposite parties herein filed an application for stay of further proceeding of the execution case.

The petitioner herein filed a written objection to such application.

After going through the said objection this Court finds that the petitioner herein has claimed in the said written objection that the area which is under occupation of the representative of the judgement debtor is a huge commercial area and the monthly rental of such premises have to be fixed at a minimum rate of Rs. 1,00,000/- per month.

This Court finds that the learned Judge of the 1<sup>st</sup> Appellate Court passed an order of stay of all further proceedings of the title execution case on condition that no adjournment shall be granted to the appellants.

Considering the nature of the decree and the fact that the opposite parties herein are claiming to be in occupation of a portion of the decreetal property and this Court by an order dated August 21, 2024 appointed a special officer to inspect the decreetal property and to ascertain the extent of occupation of Mr. Chatterjee's client in the decreetal property, this Court is of the considered view that the report of the special officer are to be supplied to the respective parties.

Since the opposite parties are claiming to be in occupation of the decreetal property, this Court is of the considered view that the opposite parties shall not be entitled to an unconditional order of stay of all further proceedings of the title execution case as an order of stay of execution would result in depriving the decree-holder from enjoying the fruits of the decree. The decree-holder should be compensated with occupation charges to be paid by the petitioner who are claiming to be in possession of a portion of the decreetal property. The condition imposed by the impugned order that no further adjournment to be granted to the appellant, to the mind of this Court, cannot be said to be condition that will protect the interest of the petitioner decree-

holder. That apart the opposite parties herein are enjoying the portion of the decretal property and is exploiting the same for commercial purpose.

For such reason, the order impugned is liable to be set aside and the same accordingly stands set aside.

The learned Additional District Judge, Fast Track Court No.II at Howrah is directed to hear out the application for stay on the next date fixed i.e. on **21<sup>st</sup> March, 2025** and to dispose of the same as expeditiously as possible but preferably by the end of April, 2025 without granting any unnecessary adjournment to either of the parties.

There shall be an unconditional order of stay of all further proceedings of Title Execution Case No.5 of 2011 pending before the learned Civil Judge (Senior Division), 1<sup>st</sup> Court at Howrah till 26<sup>th</sup> March, 2025 or until any order that may be passed by the learned Additional District Judge, whichever is earlier.

It will be open to the learned Additional District Judge to consider the imposition of such condition for extension of the interim order after March 26, 2025 at the time of hearing of the stay application on March 21, 2025, if the hearing of the application for stay, for any reasons, cannot be concluded prior to March 26, 2025.

Let copies of the special officer's report be supplied to the learned advocate on record of the respective parties in course of this day.

It will be open to the parties to take appropriate steps in accordance with law.

With the above observations and directions, C.O. 2663 of 2024 stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Hiranmay Bhattacharyya, J.)**