

21.02.2025
Item No.24
BR

CO 4015 of 2024

Uma Chakraborty.

-vs-

Sriraj Dutta and another

Mr. P.K.Mukherjee,

Mr. Debanik Banerjee,

Mr. Steven S.Biswas,

Mr. Huzaifa Shahid

.... For the petitioner

Mr. Piyush Chaturbedi,

Mr. Z.Islam,

Md. Shamim Halder

... for the respondent

The present revisional application has been preferred against an order dated 5.10.2024 passed by the learned Additional District Judge, 1st Court at Alipore, District -24-Parganas (South) in R.C. Appeal No. 2 of 2018.

By the order under challenge the learned Additional District Judge, 1st Court at Alipore, District -24-Parganas (South) in R.C. Appeal No. 2 of 2018 dismissed the application filed by the petitioner herein under Section 151 of the Civil Procedure

Code praying for stay of execution proceedings.

The findings of the learned Judge is as follows :

“ Learned advocate for the respondent raising vehement objection submits that this court vide order dated 14.2.2019 stayed all further proceedings of RC Execution Case No. 4 of 2018 pending before the learned Civil Judge (Jr Division), 6th Court, Alipore subject to payment of Rs. 10,000.- towards occupational charge and payment of arrear occupational charge. This appellant has only paid Rs. 10,000/- towards occupational charge in the month of February, 2019.

Against the said order both the parties moved before the Hon’ble Court, wherein Hon’ble High Court, Calcutta vide order dated 18.1.2024 has been pleased to affirm the impugned order dated 14.2.2019 in connection with C.O. No. 823 of 2019. But till date no occupational charge is paid. According to him this appellant has been enjoying entire floor in the area of Ballygunge place without paying a single farthing.

Perused the case record. Considered.

Learned advocate for the appellant tried to impress upon the Court that condition of stay was nothing but adhoc

payment of Rs. 10,000/- and that has already been deposited.

After minute reading, I find that this Court specifically directed to pay Rs. 10,000/- per month towards occupational charge. It is almost admitted position that save and except Rs. 10,000/- this appellant did not pay any amount towards current occupational charge. Learned trial Court decreed the suit directing this appellant to deliver vacant possession of the suit property. Against the said impugned judgment and order the present appeal has been filed . It appears to me that merely because appeal is pending the execution proceeding cannot be stayed in absence of payment of occupational charge. As such I am of the humble view that the instant application for stay should be rejected.”

Admittedly, the sum of Rs. 10,000/- as occupational charge was directed to be paid against an order of stay. The parties had moved the High Court and the High Court had affirmed the said order but admittedly no occupational charge has not been paid till date, except an ad hoc sum of Rs. 10,000/.

The learned Judge considering the said facts rightly considered the development in the case and rejected the application under Section 151 of the CPC and this Court finds

no reason to interfere with the said order, the same being in accordance with law.

At this stage the learned counsel for the petitioner prays for easy installment to pay the arrear amount of occupational charge which is pending since the year 2019.

Considering the fact that a substantial sum has accumulated, approximately being about Rs. 12,00,000/-, the revisional application is disposed of with the direction that the petitioner herein shall forthwith start paying the occupational charge for the month on and from February, 2025. The amount for February, 2025 is to be paid by 28th February, 2025 and the occupational charge for all subsequent months is to be paid by 15th of each month. In respect of arrear amount, the petitioner is granted twenty equal monthly installments. Each monthly installment is to be paid along with the occupational charge each month. Fraction, if any, is to be paid with the amount in the last month.

The revisional application stands disposed of.

On making payment as directed the order of stay shall remain in force and in case of any default it shall stand vacated automatically.

Let a copy of this order be sent to the learned trial Court.

Urgent photostat certified copy of this order, if applied for, be given to the learned counsel for the parties on usual undertakings.

(Shampa Dutt (Paul), J.)