

D/L- 67
25/03/2025
Ct. No.-6
Aritra

C.O. 4489 of 2024

**Sujit Kumar Dey
Vs.
Mithu Dey & Anr.**

Ms. Sohini Chakraborty
Mr. Biswaroop Bhattacharyya
Mr. Varun Kothari
Mr. Arya Bhattacharyya
Ms. Prajaini Das

...for the petitioner

Mr. Rajdeep Bhattacharya
Ms. Sharmila Nath

....for the opposite party

Ms. Chakraborty, learned advocate for the petitioner submits that though the orders dated July 20, 2024 and November 16, 2024 were challenged in the civil revision application but through inadvertence, in the preamble portion only the order date November 16, 2024 has been mentioned. The certified copy of the order dated July 20, 2024 has been filed in Court today, which is taken on record.

As prayed for by Ms. Chakraborty learned advocate for the petitioner leave is granted to the advocate on record of the petitioner to amend the preamble portion of the civil revision application, here and now.

The opposite party herein filed a suit for specific performance of contract. Such suit was decreed *ex parte* on December 12, 2016.

The petitioner herein filed a misc case under Order 9 Rule 13 of the Code of Civil Procedure praying for setting aside the *ex parte* decree. In the meantime, the *ex parte* decree was put into execution giving rise to Title Execution Case No.56 of 2018.

The petitioner filed an application praying for stay of all further proceedings in the title execution case. Alleging that the petitioner herein have inducted a lessee in a portion of the decretal property and is earning a substantial rental income therefrom, the opposite party herein filed an application praying for a direction upon the petitioner to pay occupation charges as a condition for stay of the execution case.

By an order dated December 16, 2023 the learned Executing Court passed an order of stay of the execution case subject to payment of occupation charges at the rate of Rs.8000/- per month. Thereafter, the opposite party herein filed an application under Section 151 of the Code of Civil Procedure praying for modification of the said order dated December 16, 2023. Alleging that the judgment debtor/petitioner herein is collecting rent at the rate of Rs.40000/- per month.

The learned Executing Court by an order dated July 20, 2024 directed the petitioner herein to file the affidavit along with agreement.

Subsequently, the learned Executing Court by an order dated November 16, 2024 directed the petitioner to

pay Rs.35000/- directly to the Bank account of the decree holder.

Ms. Chakraborty, learned advocate appearing for the petitioner submits that an amount of Rs.35000/- was fixed on the basis of the submission of the learned advocate for the petitioner. She submits that such submission was made by the learned advocate for the petitioner without any instructions being given to him by the petitioner. However, the fact remains that the agreement that is the lease deed by virtue of which the petitioner herein inducted a third party in the decretal property was not produced before the learned Executing Court.

A copy of the lease deed has been produced by Mr. Chakraborty before this Court.

Mr. Bhattacharya submits that no copy of such lease deed has been supplied to the opposite party herein.

The learned advocate on record of the petitioner is directed to supply a copy of the lease deed to the learned advocate for the opposite party herein in course of this day.

After going through the materials on record and after considering the submissions made by the learned advocate for the parties this Court is of the considered view that the occupation charges has to be fixed by taking into considering the agreement entered into by

the petitioner with the third party and other relevant factor. Since the said agreement was not placed before the learned Executing Court at the time when the impugned orders were passed, this Court is of the considered view that the impugned order is required to be set aside.

Accordingly the order dated November 16, 2024 is set aside and the application under Section 151 of the Code is restored to the file of the learned Executing Court.

The learned Executing Court is directed to reconsider the application under Section 151 of the Code of Civil Procedure filed by the opposite party praying for modification of the order dated December 16, 2023.

It has been submitted by Mr. Bhattacharya, learned advocate for the opposite party that the petitioner herein has not paid occupation charges since last 12 months. Such submission is however disputed by the learned advocate for the petitioner. He submits that till July, 2024 the occupation charges has been paid. However, such issue is left open to be decided by the learned Executing Court at the time of hearing of the application under Section 151 of the Code of Civil Procedure.

The petitioner herein is directed to pay a consolidated amount of Rs.80000/- to the bank account of the opposite party No.1 herein on or before April 11, 2025. The learned advocate on record of the opposite

party is directed to furnish the bank account number of the opposite party No.1 in course of this day.

It is however, made clear that the amount directed to be paid by this order shall be adjusted against the quantum of occupation charges that may be directed to be paid by the learned Executing Court after the rate of occupation charges and the period of default is fixed by the learned Executing Court. There shall be an unconditional order of stay of all further proceeding in Title Execution Case No.56 of 2018 till the April 11, 2025. If the amount as directed by this Court is paid within the time limit as indicated hereinbefore, the order of stay of execution shall continue till the end of April, 2025 or until further orders to be passed by the learned Executing Court.

It has been submitted by Ms. Chakraborty learned advocate for the petitioner that March 29, 2025 has been fixed in the execution case, the learned Executing Court is requested to take up the hearing of the application under Section 151 of the Code on the said date and to make an endeavor to dispose of the same as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

CO 4489 of 2024 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)