

T.A. 03 of 2024 (CIS No. 03 of 2024)

Order No.07 dated 13-08-2024

The appellant and respondent file hazira and they are represented by their Ld. Advocates.

Ld. Advocate for the appellant moves the application under Order 41 Rule 5 of the CPC praying for an order of stay of the execution of judgment and decree of Title Suit No.139 of 2011 passed by the Ld. Civil Judge (Jr. Divn.), 3rd Court, Serampore.

Heard the Ld. Advocate for the appellant.

Perused the memo of appeal, the application for stay and the available materials on record. Considered.

The present appeal is against the judgment and decree of eviction passed by Ld. Civil Judge, (Jr. Division), 3rd Court, Serampore, in T.S. No.139 of 2011. Admittedly, the Title Execution Case No. 30 of 2024 has been instituted by the respondent for executing the decree appealed against.

Ld. Advocate appearing for the appellant submits that unless the further proceedings of the execution case is stayed, the very purpose of preferring the appeal would get frustrated. Ld. Advocate, therefore, prays that the application for stay be allowed and the judgment and decree appealed against be stayed.

There is no denying the fact that once the decree appealed against is executed and satisfied, the appeal becomes infructuous. It is equally true to say that the appellant, who is occupying the suit premises despite the decree of eviction granted against him, cannot be permitted to occupy the premises without payment of occupational charges which is the ratio decided by the Hon'ble Calcutta High Court, in Shib Sankar Ghosh Vs. Joyanta Kumar Basu – reported in 2023 (3) ICC, 950(Cal).

Therefore, in the backdrop of the discussion herein above and considering the urgency involved, I am inclined to allow the application for stay filed by the appellant on condition of his paying occupational charges.

Hence, the application for stay filed by the appellant is hereby allowed on condition that he shall go on paying Rs. 3,000/- per month towards occupational charges till the disposal of the appeal.

The further proceedings of the Execution Case No. 30 of 2024 pending in the court of Ld. Civil Judge, (Jr. Division), 3rd Court, Serampore, shall remain stayed until disposal of the appeal on condition that the appellant shall pay occupational charges @ Rs. 3,000/- per month without default.

In case of default of payment of occupational charges, the order of stay shall stand vacated.

The application under Section 151 of CPC filed by the respondent on 03.07.2024 wherein he prayed for grant of occupational charges, is accordingly disposed of.

Call for the Trial Court record at once.

Todate i.e. (29.08.2024) for awaiting Trial Court record and further order.

Let a copy of this order be sent to the Court of Ld. Civil Judge, (Jr. Division), 3rd Court, Serampore, for information.

Dictated & Corrected by me.

Sd/- Sri Sandip Chakrabarti
ADJ, 2nd Court, Serampore.

Sd/- Sri Sandip Chakrabarti
Additional District Judge,
2nd Court, Serampore.
JO code WB 00818