

Title Appeal – 11/2022

CIS – 11/2022

Order No. 09 dated 20.09.2022:

Today is fixed for filing requisites and hearing of application stay operation of decree of eviction.

Appellant files hazira but failed to file requisites.

Stay application is taken up for hearing.

Ld. Advocate appearing for the appellant submitted that the operation of the impugned judgment and decree should be stayed till disposal of appeal otherwise the appellant would suffer substantial loss if he is evicted in execution of the decree. He further submitted that Dhr has already filed Execution Case No.8/22 for execution of the decree and Misc. Case No.72/22 for police help.

Perused the stay application and materials on record. Considered.

Suit for eviction of a premises tenant was decreed on contest against the appellant but the appellant is continuing in possession of the suit premises and filed the instant appeal and prayed for stay of operation of the impugned judgment and decree. Dispossession, during pendency of appeal of a party in possession, is certainly considered to be a substantial loss to the party applying for stay of execution within the meaning of Order 41 Rule 5 CPC. No doubt, the appellate Court while granting stay can impose condition for payment of occupational fee. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant. So, an applicant for an order of stay must do equity for seeking equity. Depending upon the facts and circumstances of the case, an appellate court, while by passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice. The Appellate Court have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree holder for the loss occasioned by delay in execution of the decree by the grant of the stay order. The suit premises is a shop room. The appellant has been occupying the since prior to 1991. Monthly rent of the suit premises was determined at Rs.50/- in proceeding under Section 17(2) of the WBPT Act, 1956. Considering the location, area and structure of the suit premises, I think that occupational charge of Rs.1,500/- per month, in addition to the contractual rent, would be reasonable.

Hence it is,

ORDERED

That stay application filed by the appellant is allowed ex parte.

The operation of the impugned judgment and decree dated 03.02.2022 passed by Ld. Civil Judge (Jr. Divn.), Addl. Court, Serampore in Title Suit No. 230 of 1997 shall remain stayed till disposal of this appeal subject to the condition that the appellant shall deposit in Court Rs.1,500/- (Rupees One Thousand Five Hundred) per month, in addition to the contractual rent, with effect from 1st April, 2022.

Contd....next page...

Title Appeal – 11/2022

Contd.....Order No. 09 dated 20.09.2022:

The appellant is directed to deposit arrear occupational charge within two months from this day and to deposit current occupational charge of the suit premises within 15th day of each succeeding months, in default, the stay order shall stand vacated.

Appellant is directed to file requisites on the next date fixed positively, i.d. the appeal shall be dismissed. No adjournment further adjournment shall be granted for filing requisites.

Fix 10.11.2022 for filing requisites, i.d. the appeal shall be dismissed.

Let a copy of this order be sent to Ld. Civil Judge (Jr. Divn.), Addl. Court, Serampore, Hooghly, for information.

Dict. & corr. By me.
Sd/- Sri. Shailendra Kumar Singh
Addl. District Judge, 2nd Court,
Serampore, Hooghly.

Sd/- Sri. Shailendra Kumar Singh
UID No. - WB665
Addl. District Judge, 2nd Court,
Serampore, Hooghly.