

Title Appeal-34 of 2015

Order dt 22.04.19.

Today is fixed for hearing of the petition dated 12.03.15 with the prayer for stay as well as hearing of the appeal. Ld Advocate for the appellant and the Ld Advocate for the respondents file their respective hazira.

The record is taken up for hearing of the petition dated 12.03.15 filed u/o 41 rule-5, r/w section 151 CPC.

Ld Advocate for the appellants submits that the appellants being aggrieved by and dissatisfied with the judgment and decree dated 30.01.15 passed by the Ld Civil Judge (Sr. Division), 3rd Court, Howrah filed the instant T.A. He submits that the Ld Trial Court has wrongly held that the appellants are the licensee and the thereby has been pleased to pass order of eviction from the suit property. He submits that the plaintiff of the T.S. no.-13/96 has filed execution proceeding/case on the basis of decree passed in the said suit. He submits that if the appellants are evicted from the suit property then the present T.A. will be infructuous and to prevent the original plaintiffs to get executed the decree, the appellants have filed this instant stay petition. He submits that the appellants are agreed to file the security bond if the prayer of the petition dated 12.03.15 is allowed. He prays for allowing the prayer of the petition dated 12.03.15.

He further submits that the appeal may be heard on another date.

Ld Advocate for the respondents submits that as per the provision of Order-41 Rule-5 CPC stay may be granted subject to deposit of heavy amount.

Perused the materials on record. It appears to me that the petition dated 12.03.15 has been filed supported with affidavit. It appears to me that Ld Advocate for the respondents does not dispute the claim of the appellants that the decree holder of T.S.-13/1996 has put the decree for execution.

Thus, it is clear that if the Ld Trial Court proceeds with the execution case on the basis of the decree passed in T.S.-13/96, then this instant T.A. will certainly be infructuous.

In view of the situation, the application u/o-41 rule-5 CPC is allowed on contest but without cost.

So, the operation of the decree passed in T.S. no.-13/96 by the Ld Civil Judge (Sr Divn), 3rd Court, Howrah is stayed till the next date subject to furnishing security of Rs.15,000/- in the prescribed format as per schedule (Form no.-2 of Appendix G) within seven days for complying the final decision that may be passed in this Title Appeal.

Let a copy of this order be sent to the court of Ld. Civil Judge (Sr Divn), 3rd Court, Howrah for his information.

To 16.09.2019 for hearing of the appeal.

Additional District Judge,
4th Court, Howrah.