

**In the Court of Ld. District Judge, South 24-Parganas**

**Present :Chaitali Chatterjee Das, (WB01056) District Judge at Alipore**

**Ejectment Appeal No. 02 of 2022 (R-02)**

**Tanmay Bhattacharjee ..... Appellant**

**.....Vs....**

**Bidyut Dutta Roy..... Respondent**

**Order no.04, dated 11.04.2022**

Today is fixed for hearing the stay petition.

Both the parties are present by filing hazira.

The appellant's case is that by virtue of the registered deeds of conveyances he and his wife became the co-owner of 1/3rd undivided share in the entire suit property and he was never a tenant when the judgement and decree has been passed for eviction and recovery of possession where treating him as the tenant and is in illegal occupation of the premises.

That the Ld. Civil Judge (Sr. Divn.), 9<sup>th</sup> Court has passed the judgement and decree in T.S. 9755 of 2012 in favour of the respondent. Thereafter, the respondent has filed the Ejectment Execution Case being No. 01 of 2022 for execution of the judgement and decree before the said court. Being aggrieved by and dissatisfied with said order the appellant has preferred this instant appeal with a prayer for stay of the Ejectment Execution Case being No. 01 of 2022 passed by the 9<sup>th</sup> Court of ld. Civil Judge (Sr.Divn.) at Alipore.

That the ld. Trial Court has failed to observe that any amount of rent has ever been paid by the appellant but observed he is a defaulter. Challenging the said judgement he has come up before this court praying for stay order is given the purpose of filing the appeal will be infructuous.

Per contra, it is submitted by the ld.advocate for the respondent that he was a tenant and the deeds relied upon by him are not acceptable and

**(contd.....)**

**::(2)::**

**(contd.....Order no.04, dated 11.04.22 in Ejectment Appeal No, 02 of 2022)**

the ld.Court below after framing issues decided the same against the appellant. It is the contention of the ld. advocate for the respondent that he cannot raise any objection to the right of appeal and if any stay is given the occupational charge must be given by the appellant.

Heard the submissions of Ld. Advocates for both sides.

Perused the record, application for stay and the judgment and decree.

The fact remains that the instant appeal has been preferred challenging the judgment and decree dated 24.12.2021 in Title Suit No. 9755 of 2012, passed by the Ld. Civil Judge (Sr. Divn.),9<sup>th</sup> Court, Alipore, South 24-Parganas, whereby the Ld. Court below decreed the suit on contest and directed the appellant to vacate the possession of the suit properties as described in schedules "A","B" and "C" of the plaint within 60 days from the passing of the judgment and decree.

It is settled law that appeal is statutory right and the appellant must be given an opportunity to exercise the same. This Court is also of the view that when appeal is admitted unless the stay order is granted to parties, the filing of the appeal would be infructuous where the judgement and decree of the ld. Trial Court is under challenge.

So far as the occupation charges is concerned, no amount is found from the forecorners of the judgement and decree on the basis of which the same is to be considered. Moreover, the germane of the dispute pertains to whether the appellant is the owner or tenant and the ld. Trial Court passed the decree considering him as a tenant.

At this stage, after going through the record as it appears that since the filing of this suit till date no where any direction is found to make any payment towards rent or occupation charges and the dispute pertains to ownership of the suit property on the strength of registered Deed of

**(contd.....)**

**::(3)::**

**(contd.....Order no.04, dated 11.04.22 in Ejectment Appeal No, 02 of 2022)**

Conveyance this court is of the view that at this stage question of payment of occupation charges does not arise.

Accordingly, prayer for stay stands allowed.

Hence, it is,

**O R D E R E D**

that, let there be stay of the operation of the execution proceeding being Title Execution Case No. 01 of 2022, arising out of the judgment and decree dated 24.12.2021 in Title Suit No.9755 of 2012, pending before the Ld. Civil Judge (Sr. Divn.), 9<sup>th</sup> Court, Alipore, South 24 Parganas, till **12.05.2022**.

Now, as both the parties have appeared before this Court, let the case be transferred to the Court of Ld. Additional District Judge, 3<sup>rd</sup> Court at Alipore, South 24 Parganas, for hearing and disposal.

Fix **12.05.2022** for hearing of the appeal before the Ld. Transferee Court.

Both parties are directed to appear before the Ld. Transferee Court on the date fixed.

Ld. Transferee Court is at liberty to call for the LCR, if required.

Dictd. and corrected by me  
Sd/- Chaitali Chatterjee Das  
District Judge

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District Judge  
(WB01056)