

Present:- Kumkum Chattopadhyay

P.P. Appeal No. 25 of 2017

Order No. 44 dated 04.12.2024

The case record is taken up by a put up petition.

CESC Ltd the petitioner has filed an application for restoration of stay u/s 151 of CPC along with fresh vokalatnama. Petitioner has also filed photocopy of the letter dt. 29.11.2024 of Ld. Advocate along with photocopy of postal receipt and track report filed by the petitioner.

From the petition it appears that the instant petition has been filed praying for restoring the order of stay passed by this Court on 07.11.2017 after condoning the delay in preferring the instant application. On perusal of the case record it appears that next date was fixed on 28.02.2025 for hearing of the appeal and it also appears that stay was granted to the petitioner till the disposal of the appeal on condition that the appellant must deposit Rs.22,00,000/- at part payment of the damages and assessed by the Ld. Estate Officer by 24.11.2017 and also to deposit Rs.2,50,000/- per month as occupational charge within first seven days of the following month regularly and in default of payment of occupational charge for any month, the stay will be vacated automatically. On perusal of the petition it appears that there is no endorsement of receiving copy on behalf of respondent. However, Ld. Advocate for the petitioner has submitted that copy has already been served to the O.P . It appears from the annexure filed by the petitioner that the photocopy of the postal receipt is illegible and original postal receipt is not filed by the petitioner. From this it is not clear whether copy of this application was sent to the proper address of the respondent or not. Moreover I do not find that copy of the restoration of stay u/s 151 CPC has been served to the respondents in any manner. I do find that only one Advocate's letter is served to the respondent as per submission of the petitioner. On perusal of the case record it appears that vide order no.37 dated 20.09.2023 the stay order passed by this Court was vacated since the appellant was absent on that date without taking any steps. No document has been filed by the petitioner that it all along has deposited occupational charged even on the relevant date when the stay order was vacated. It appears from the case record that even after that order passed by this Court petitioner / appellant filed any application praying for extension of stay order. Even then they did not file any application for restoration of stay. Since the petitioner cannot satisfy that copy of the instant application u/s 151 CPC praying for restoration of stay order which was vacated vide order No. 37 dated 20.09.2023 has been served to the respondent and also want for the document in order to show that they all along paid occupational charges regularly, I am in considered view that this petition cannot be considered at this stage without giving any opportunity to the respondents.

Accordingly this petition is rejected at this stage.

To date (28.02.2025) for hearing of appeal.

Dictated & corrected

Additional District Judge,
3rd Court Alipore

Additional District Judge,
3rd Court, Alipore
(WB00742)