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Ejectment Appeal No. 17/2025
CNR No. WBSP070021842025
R 17/2025

Present- Sri Subhajit Basu
LLM,
Addl. District Judge,
2nd Court, Sealdah.
J.O.Code WB00896

Order No. 6
dated 19.02.2026

Today is fixed for hearing of the petition for Stay, W/O, if any in the meantime.

Both the Appellant and the Respondent/plaintiff are duly represented by their respective Ld Lawyers.

The Ld. Lawyer of the Respondent/plaintiff files written objection against the application praying for stay of the Ejectment Execution No. 11 of 2015, duly supported by an affidavit, copy of which is served upon the Appellant.

The stay petition dt. 17.12.2025 is taken up for hearing.

Ld Lawyer for the Appellant has filed a petition praying for stay of operation of the proceedings of the Ejectment Execution Case being No. 40 of 2025 pending before the Ld 1st Civil Judge (Jr. Div.), Sealdah till disposal of the instant Appeal on the ground that if the execution proceeding is allowed to be continued before the Ld. 1st Civil Judge (Jr. Div.), Sealdah, then his appeal would be rendered infructuous. He also prayed that if the Court intends to saddle the appellant with occupational charges then the quantum should not exceed Rs. 1500/- per month. In view of the averment made by the landlord in paragraph 8 of her plaint, "...as a trespasser on and from 01.03.2015 and liable to pay damages @ Rs. 50/- per dim till the eviction of the suit property with due process of law.

The Ld Lawyer for the Respondent had filed a written objection to the Appellant's application for stay of Ejectment Execution Case being No.40 of 2025, on 19.02.2026, wherein, he had categorically denied and disputed the averments made by the Appellant, stating inter alia that the suit property, measuring about 751 square feet more or less in question, is situated at Hem Chandra Naskar Road, which is hundred feet in width and there are hospitals, schools, colleges which are at a distant from 15 minutes from the suit property and the market rate of rent is not less than Rs. 25,000/- and as the status of the appellant is that of a trespasser, prayed that the stay petition should be rejected in limini. The Ld. Lawyer of the respondent also referred to a print out downloaded from Directorate of Registration and Stamp Revenue showing Market Value of Apartment as Rs. 72, 68, 287/-.

The Ld Lawyer for the Appellant moving the said application prayed for stay of operation of the proceedings of the Ejectment Execution Case being No. 40 of 2025 pending before the Ld 1st Civil Judge (Jr. Div.), Sealdah till disposal of the instant Appeal on the ground that if the execution proceeding is allowed to be continued before the Ld. 1st Civil Judge (Jr. Div.), Sealdah, then his appeal would be rendered infructuous.

Ld Lawyer for the plaintiff/Respondent submitted that the status of the Appellant is merely that of a trespasser in the eyes of law. that the suit property, measuring about 751 square feet more or less in question, is situated at Hem Chandra Naskar Road, which is hundred feet in width and there are hospitals, schools, colleges which are at a distant from 15 minutes from the suit property and the market rate of rent is not less than Rs. 25,000/- and as the status of the appellant is that of a trespasser, prayed that the stay petition should be rejected in limini.

Heard Ld Lawyer for both sides at length.

Perused materials on record.

It is the settled position of law that mere preferring of an appeal does not operate as stay on the decree or order appealed against on the proceedings in the Court below.

A prayer for the grant of stay of proceeding or on the execution of decree or order appealed against has to be specifically made to the Appellate Court, as has been done in the instant case, and the Appellate Court has discretion to grant an order of stay or to refuse the same. The object of such stay is that inspite of the Appeal having been entertained for hearing by the Appellate Court, the Appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is pitted and weighed against the other para-mount consideration: why should a party having succeeded from the Court below be deprived of the fruits of the decree/orders in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the Court dealing with a prayer for the grant of stay asks to itself is : why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to continue by

granting stay, and not the question why the stay should be granted. Dispossession during the pendency of an Appeal of a party in possession is generally considered to be a substantial loss to the party applying for stay of execution within the meaning of Clause-a of Sub-rule (3) of Rule 5 of order 41 of the Code.

The power to grant stay is discretionary and flows from the jurisdiction conferred on an Appellate Court which is equitable in nature but the applicant for order of stay must do equity for seeking equity and the Appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the Appeal.

In the case in hand, the Appellant is in occupation of one residential cemented floor flat on the ground floor, road facing, measuring about 751 square feet more or less at premises no. 38A, Hemchandra Naskar Road, PS-Beliaghata, Kolkata-700010, as per plaint, on hundred feet width road with hospitals, schools and colleges within 15 minutes from the suit property and the same can well be considered to be located in a prime locality, at the heart of Metropolitan city having all amenities in the surrounding vicinity, considering that the Market Value of Apartment as Rs. 72, 68, 287/-, as downloaded from Directorate of Registration and Stamp Revenue

No document has however been referred to or relied upon by the appellant to bring to the notice of the Court as to what is the present valuation of the property or what is the current rate of monthly rent prevailing in that locality though the Ld. Lawyer of the respondent referred to a print out downloaded from Directorate of Registration and Stamp Revenue showing Market Value of Apartment as Rs. 72, 68, 287/-.

In these days of high rising consumer price index, the portion as occupied by the Appellant, at a prime locality, would not come for free and current monthly rental is quite high.

Keeping in view all parameters and guidelines of the Hon'ble Apex Court in this regard, the Appellant is directed to deposit a sum of Rs.13,000/- (Rupees Thirteen thousand) only per month, before the Ld. Civil Judge (Junior Division), 1st Court, Sealdah in Ejectment Execution No. 40 of 2025 from the date of the judgement & decree dt. 19th June, 2025, drawn by the Ld. Trial Judge.

The occupational charges for February, 2026 is to be cleared within the end of this month i.e. 28.02.2026, and from March, 2026 onwards to be paid within the 07th day of every following English Calendar month. The arrears of occupational charges from the date of judgement & decree (19.06.2025) till the month of January, 2026 should be cleared in eight equal monthly installments starting from February, 2026.

On payment of occupational charges for the month of February, 2026 within 28th February, 2026, before the Ld Executing Court, the operation of the execution of decree and consequentially the execution proceedings, pending before the Ld. Civil Judge (Junior Division), 1st Court, Sealdah, being Ejectment Execution Case being No. 40 of 2025 be stayed pending the hearing of the appeal.

It is however made clear that this Order is passed without prejudice to the rights and contention of the parties and the occupational charges, which will be deposited by the Appellant, would be decided with the fate of the appeal.

It is however made clear that if the Appellant fail to pay or deposit the aforesaid occupational charges for two consecutive months or defaults in clearing the arrears as stated the order of Stay shall stand vacated automatically and the Ld. Executing Court would be at liberty to proceed with the execution proceedings.

Let a copy of this order be sent to Ld. Civil Judge (Junior Division), 1st Court, Sealdah, for information.

Office to issue letter calling for the TCR at once.

Fix **13.03.2026** for hearing of the appeal and TCR in the meantime.

D/C by me,

ADJ-2, Sealdah

Subhjit Basu
Addl. District Judge,
2nd Court, Sealdah
J.O.Code WB00896