

22.01.2024
Crt. No.21
Item Nos.26 & 27.
KB

S.A.T. 177 of 2023
Dharamvir Kumar Singh
Vs.
Sarat Kumar Gupta & Ors.

with

S.A.T. 178 of 2023
with
IA No. CAN 1 of 2023

Dharambir Kumar Singh
Vs.
Sarat Kumar Gupta & Ors.

In Re: IA No. CAN 1 of 2023
in
S.A.T. 178 of 2023

Mr. Gopal Chandra Ghosh
... For the appellant
in both the matters.

Mr. Tarak Nath Halder
... For the respondent Nos.
1 to 3 in both the matters.

IA No. CAN 1 of 2023 in S.A.T. 178 of 2023 is
taken up for further hearing.

Learned Counsel appearing on behalf of the
appellant submits that an order passed by the First
Appellate Court at the time of granting stay of the
execution proceedings is not binding at this stage as
because with the filing of the Second Appeal, the
entire aspect reopens and in support of his contention

Learned Counsel relies upon an authority published in 55 CWN 509 corresponding to AIR 1952 CAL 124 and also relies upon another authority published in (2004) 2 SCC 747.

He further submits that considering the aforesaid submission the order passed by the First Appellate Court is not binding. He also submits that the appellant/tenant has been given one single tin shed on the roof of the second floor without having bath, privy, water supply and electricity. He further submits that the electricity has been obtained from other person.

The learned counsel appearing on behalf of the respondents no.1, 2 and 3 relies upon four unreported orders passed in C.O. 897 of 2017, C.O. 463 of 2023, C.O. 422 of 2018 and C.O. 3340 of 2018 by Co-ordinate Single Benches of this Hon'ble Court.

He stresses upon the point that on the basis of guesswork occupational charges can be fixed. He further submits that the suit property is situated in a very valuable area, i.e. Moulali.

The learned counsel further submits that the occupational charges imposed by the First Appellate Court at the time of stay of the operation of the judgement of the Trial Court is now binding upon the

parties as because the appellant has not preferred any appeal against the said order and as such he has accepted the same.

In the aforesaid facts and circumstances, the learned counsel submits that the amount which has been assessed as occupational charges by the First Appellate Court while passing the order of stay of execution of the judgment of the Trial Court cannot be decreased. Hme further submits that the said amount can be increased as because the said order was of the year 2021 and two to three years have passed by in the meantime.

Heard the learned counsels.

The matter is reserved as **“For Orders”**.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

(Supratim Bhattacharya, J.)