

31.1.2024
Court No.21
PA

SAT 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
Mr. Sagnik Chatterjee
Ms. Srijita Nath
...For the Respondent Nos.
1 to 3 in both the matters...

The Ld. Counsels representing the appellants and the respondents are present.

The application being CAN 1 of 2023 through which the appellant has prayed for stay of operation of the Title Execution case No. 11 of 2020 pending before the Ld. Additional Civil Judge Junior Division at Sealdah is taken up for passing order.

Ld. Counsels namely Mr. Gopal Chandra Ghosh representing the appellants and Mr. Tarak Nath Halder representing the respondents no. 1, 2 and 3 have apprised the Court and through their assistance this Court has perused the said application filed by the appellant praying for stay of operation of the said Title Execution, the affidavit-in-opposition filed on behalf of the respondents No. 1, 2 & 3 including the order No. 3 dated

28.01.2021 passed in Title Appeal No. 11 of 2020 by the Ld. Judge of the 1st Appellate Court and the order dated 04.10.2023 passed by the Hon'ble Division Bench of this Hon'ble Court at the time of admission of the said appeals.

The Ld. Counsel appearing on behalf of the appellant has submitted that an order passed by the 1st Appellate Court at the time of granting of stay of the operation of the Judgement and Decree passed by the Ld. Trial Court is not binding at this stage, as with the filing of the instant Second Appeal the entire aspect reopens. He has further submitted that the appellant is presently occupying one single tin shed on the roof of the second floor measuring only 80 square feet and that too without the facility of bath, privy, water supply and electricity. Embarking upon the aforementioned contentions the Ld. Counsel has prayed for passing an order of stay of the said Title Execution proceedings by reducing the amount of Rs. 3000/- which has been imposed by the Ld. 1st Appellate Court while passing the order of stay of the execution proceedings.

The Ld. Counsel representing the Respondents No. 1, 2 and 3 has submitted that the appellant has not paid a farthing in spite of the imposition of Rs. 3000/- as occupational charge way back during the year 2021. He has further submitted that the appellant herein who has prayed for stay of the execution proceeding has neither

complied with the order of the Ld. 1st Appellate Court nor had preferred any application against the said order of stay granted by the Ld. 1st Appellate Court before any higher forum. The Ld. Counsel has emphasized upon the point that this being the scenario the principle of *res judicata* applies and the appellant is debarred from agitating the fact that the amount of Rs. 3000/- which was imposed by the Ld. 1st Appellate Court be reduced. The Ld. Counsel has further submitted that with the passage of time the valuation of Rs. 3000/- which had been then imposed as occupational charge has significantly diminished as such the amount of occupational charge is required to be enhanced. He has further submitted that the occupational charge is also to be enhanced considering the fact that the valuation of the property has increased manifold with the passage of time. The Ld. Counsel has further submitted that the suit property is situated at Moulali crossing which is a well-known place in Kolkata. Relying upon the aforesaid facts the Ld. Counsel has prayed for enhancing the amount of occupational charge that is Rs. 3000/- per month which was imposed by the Ld. 1st Appellate Court.

This Court firstly takes into consideration as regards to the fact of staying the proceedings of the Title Execution Case No. 11 of 2020 pending before the Ld. Additional Civil Judge Junior Judge at Sealdah. If no order of stay is granted then the petitioner/appellant may

be dispossessed from the suit property which will make the instant appeal infructuous in such circumstance, an order of stay in respect of the proceedings of the said Title Execution case till disposal of the instant appeal is **allowed.**

This Court now takes into consideration the fact as regards to the amount of occupational charge which is to be imposed at this present juncture. While assessing the quantum of occupational charge several aspects are to be taken into consideration, the place where the property is situated, the measurement of the property in dispute and the amenities attached thereto. In this instant case it is admitted that the property is situated at Moulali crossing which is a busy locality. On the other hand it is also to be considered that neither electricity nor bath, privy and water supply is being provided to the petitioner/appellant and the disputed property is situated on the roof of the second floor being a tin shed of 80 square feet. While it may be said that a person occupying a tin shed in that locality has to pay occupational charge much above Rs. 3000/- per month which has been fixed by the Ld. 1st Appellate Court during the year 2021 on the contrary it is fact that along with the said tin shed no basic amenities such as electricity, water supply and bath and privy are not being provided. It is also fact that the petitioner/appellant had not preferred any appeal against the order of Rs. 3000/- per month as occupational charge

which was fixed by the Ld. 1st Appellate Court on 28.01.2021. Considering the pros and cons this Court is of the view that the occupational charge be Rs. 3000/- per month.

The petitioner/appellant is directed to pay the arrear occupational charges, which has accrued since the date of passing of the Judgement and Decree dated 07.03.2020 passed by the Ld. Trial Judge, in three (3) equal installments to be paid during the forthcoming consecutive three months commencing from the month of February, 2024 and is further directed to pay the occupational charge of **Rs. 3000/- per month** within the 10th day of each subsequent month.

The petitioner/appellant shall make payment by depositing the amount in the bank account of the respondent and the respondent is directed to furnish his bank account.

The payment to be made by the appellant and received by the respondent as occupational charge shall be subject to the final decision of this instant appeal. In case of default for consecutive three (3) months by the appellant in payment of the occupational charge and the arrear occupational charge as per the direction given earlier, the order of stay shall stand vacated.

The appellant shall use the suit property as he has been using the same without causing any deviation in the mode and manner of use and occupation.

Let the LCRs be called.

It has been submitted by the Ld. Counsel representing the respondents that messenger cost has been deposited. In such circumstances **Registry** is directed to do the needful immediately.

After arrival of the LCR, the Ld. Counsels be intimated.

If the LCRs are found to be complete paper books be prepared.

Let the matter be fixed on **4th of March, 2024** under the heading '**to be mentioned**'.

(Supratim Bhattacharya, J.)