

October 29, 2021

AD 25  
Ct.6.  
BPG & SG

C.O. 1890 of 2021

(Via Video Conference)

The Secretary, Xaviers English School

-vs-

*Sharmila Dutta and others*

Mr. Saptangshu Basu  
Mr. Shuvasis Sengupta  
Mr. Balarko Sen  
Ms. Puspika Sahoo.

... for the petitioner.

Mr. Nitai Ch. Saha.

... for the opposite parties.

The petitioner has challenged an order No.08 dated October 1, 2021 passed by the Additional District Judge, 1<sup>st</sup> Court at Serampore, Hooghly, in Title Appeal No.62 of 2019.

By the order impugned, the learned Judge of the court of appeal below rejected the application for stay of the execution case filed in connection with the said Title Appeal.

Mr. Basu, learned senior Advocate for the petitioner submits that the learned Judge of the court of appeal below rejected the application for stay as a coordinate Bench of this Court has directed the Executing Court to dispose of the execution case within a specified time frame.

Learned advocate appearing for the opposite parties submits that the petitioner did not take steps in the appeal,

as a result of which the hearing of the title appeal is being unnecessarily prolonged.

I have heard learned advocates for the parties and perused the materials on record. The petitioner has suffered a decree of eviction. The petitioner has preferred an appeal. In connection with the said appeal, the petitioner has applied for stay of the execution proceedings.

The learned Judge of the court below rejected the stay application only on the ground that a coordinate Bench of this Court directed the execution case to be disposed of within two months.

The appellate court is empowered to pass an order for stay of the execution of a decree for sufficient cause.

A direction for expeditious disposal of an execution case cannot create an embargo upon the appellate court to decide an application for stay on its own merits. In the event the appellate court adjudicates the application for stay on its merit, the same cannot in any way be construed to be interfering with the order of expeditious disposal passed by this Court even if the appellate court decides to pass an order of stay for sufficient cause. This Court does not approve the reasons assigned in the impugned order for rejection of the application for stay.

The order impugned is, thus, set aside.

The learned Additional District Judge, 1<sup>st</sup> Court at Serampore, Hooghly is directed to take up the hearing of the

application for stay after reopening of this Court after Puja Vacation.

It has been submitted by learned advocate for the opposite parties that the opposite parties have already filed written objection to the stay application.

Since the application for stay was rejected by the impugned order and it has been submitted by Mr. Basu, learned senior advocate for the petitioner that the executing court is proceeding with the execution of the decree pursuant to a direction passed by a co-ordinate Bench of this Court, there shall be an order of stay of all further proceedings in Title Execution Case No.2 of 2020 pending before the learned Civil Judge (Junior Division), 1<sup>st</sup> Court at Serampore, Hooghly till the end of December, 2021 subject to the condition that the petitioner shall deposit a sum of Rs.50,000/- before the Executing Court on or before November 15, 2021 on account of occupation charges as a condition for stay of the execution case.

It is, however, made clear that in the event the said amount is not deposited within the time mentioned hereinabove, the order of stay shall stand vacated without any further reference to this Court.

It is further made clear that the direction to deposit a lump sum occupation charge has been made as a condition for grant of stay by this Court for a limited period. The appellate court will be free to decide on the quantum of the occupation charges, if any, to be paid at the time of deciding

the application for stay and the amount directed to be deposited by this order shall be adjusted with the amount adjudicated by the court of appeal on account of occupation charges.

C.O. 1890 of 2021 is, thus, disposed of.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

***(Hiranmay Bhattacharyya, J.)***