

(2018) 05 CAL CK 0130
In the Calcutta High Court
Case No : C.O. No. 914 of 2018

Saswati Dutta

APPELLANT

Vs

Sree Sree Iswar Gobinda Jew & Anr.

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 9 Rule 13, 9
Constitution Of India, 1950 — Article 227

Citation : (2018) 05 CAL CK 0130

Hon'ble Judges : SABYASACHI BHATTACHARYYA, J

Bench : Single Bench

Advocate : Partha Pratim Roy

Final Decision : Disposed Of

Judgement

The judgment-debtor in an eviction suit has preferred the instant revisional application.Â By virtue of the impugned order dated November 07, 2017,

occupation charges were directed to be paid by the petitioner at the rate of Rs.15,000/- per month as a condition for stay of execution of the eviction

decree. In a nutshell, the facts of the case are:

The opposite party no. 1 obtained an ex parte decree of eviction against the petitioner. The petitioner took out an application under Order IX Rule 13

of the Code of Civil Procedure for setting aside such decree, along with an application for condonation of delay in filing such application.Â

Such condonation of delay was allowed and costs of Rs.3,000/- were directed to be paid by the petitioner.Â The petitioner having failed to pay such

costs, the application for condonation of delay stood rejected and, consequentially, the application under Order IX Rule 13 of the Code of Civil

Procedure was also dismissed.

Thereafter, the petitioner filed the present miscellaneous case, bearing Miscellaneous Case No. 80 of 2016, captioned to be one under Order IX Rule

9 of the Code of Civil Procedure, for restoration of the application under Order IX Rule 13 of the Code. In such miscellaneous case, the petitioner

prayed for an order of stay of execution of the eviction decree, which was granted on condition of payment of occupation charges at the rate of

Rs.15,000/- per month within the tenth day of each month, by the impugned order.

It may very well be that the condition imposed is a bit on the higher side as far as the quantum of occupation charge is concerned, yet such imposition

was a valid exercise of discretion by the court below and ought not to be interfered with under Article 227 of the Constitution of India merely because

in the opinion of this Court a different view is possible.

As such, C.O. No. 914 of 2018 is disposed of without interfering with the impugned order and requesting the Judge, Fourth Bench, City Civil Court at

Calcutta to dispose of Miscellaneous Case No. 80 of 2016, arising out of Ejectment Execution Case No. 82 of 2013 as expeditiously as possible

without granting any unnecessary adjournment to either side, preferably within October 12, 2018.

Since in view of pendency of this revisional application till date, the petitioner had not deposited the occupation charges as directed by the impugned

order, the petitioner is permitted to pay/deposit the arrear occupation charges in terms of the impugned order dated November 11, 2017 within July 15,

2018 and to go on paying current occupation charges pursuant to the direction embodied in the impugned order.

There will be no order as to costs. Urgent certified website copy of this order, if applied for, be made available to the petitioner upon compliance of all

requisite formalities.