

S/L 4
14.12.2020
Court. No. 19
GB

C.O. 1534 of 2020

Md. Moazzem Hossain @ Moyajeem Hossain
@ Moyyazam Hossain
Vs.
Md. Takbir Ali

(Through Video Conference)

Mr. Ram Prakash Banerjee,
Mr. Ambu Bindu Chakraborty.
...for the Petitioner.

This revisional application has been filed by the petitioner/decreed-holder in Title Suit No.52 of 2014, the execution of which is pending before the learned Civil Judge, Junior Division, 2nd Court at Malda.

The judgment debtor preferred an appeal against the decree. The learned appeal court initially refused to grant any stay of the said decree in the appeal. The appeal was registered as O.C. Appeal No.02 of 2018. During the pendency of the appeal, the decree-holder was favoured with a writ of delivery of possession by the learned executing court in O.C. Execution Case No.5 of 2018. The writ of delivery of possession could not be executed by the Nazir due to obstruction by the judgment debtor on June 26, 2018. Thereafter, in the month of July the Nazir filed a report before the learned court below.

The plaintiff/decreed-holder/petitioner filed an application under Order 21, Rule 97 for execution of the writ

of summons through police help being Misc Case No.04 of 2019. The said application was rejected by the learned Civil Judge, Junior Division, 2nd Court at Malda on two-fold grounds. First, that during the pendency of the appeal, writ of delivery of possession ought not to have been issued and secondly, the application was under Order 21, Rule 97 was filed beyond 30 days. Although the learned court below was not correct in holding that the writ could not be issued during the pendency of the appeal especially because the appellate court had not granted any order of stay of the decree but, the learned court below was correct in rejecting the application on the ground of limitation.

Today a copy of the judgment and decree of the appeal has been furnished which shows that O.C. Appeal No.02 of 2018 has been dismissed on contest by the learned District Judge, Malda by judgment and decree dated January 15, 2020.

I do not find any reason to interfere with the order impugned but the petitioners are always at liberty to go back before the learned executing court and pray for execution in terms of the provision of the Code of Civil Procedure. If the petitioner files an application before the learned court below the same shall be disposed of expeditiously upon allowing an opportunity of hearing to the parties.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)