

**C.O. 283 of 2021
with
C.O. 414 of 2021**

**Noor Md. Ansari @ Doma
-Vs-
Mst. Ahamedi Begum & Anr.**

Ms. Debjani Ray,
Mr. Bishajib Ghosh,
Mr. Sumitava Chakraborty.
...for the petitioner.

Mr. Sanjay Banerjee.
.....for the opposite parties.

Affidavit of service and the supplementary affidavit filed in connection with C.O. 283 of 2021 and the affidavit of service filed in connection with C.O. 414 of 2021 are taken on record.

These two revisional applications are interconnected, as such taken up together for analogous hearing and disposal.

The petitioner has suffered a decree of eviction in Ejectment Suit No. 392 of 2009 subsequently renumbered as Ejectment Suit No. 10 of 2016.

The petitioner aggrieved by the said decree has preferred the Ejectment Appeal No. 18 of 2019 which is pending before the 15th Court of the learned Additional District Judge at Alipore.

In the said appeal, the petitioner on June 13, 2019 filed an application praying stay of the Execution Case levied to execute the decree under appeal.

The appeal Court below, by the order impugned in C.O. 414 of 2021 being order no.4 dated August 09, 2019 has deferred the hearing of the said application to be taken up along with the appeal.

Ms. Debjani Ray, learned counsel appearing on behalf of the petitioner submits that the prayer of the said application although has not been couched in a proper manner but the petitioner by the said application has prayed for stay of the said execution case.

A decree when is under challenge in an appeal, during the pendency of the said appeal, the said decree cannot allowed to be executed rendering the appeal infructuous, as such, the direction for disposal of the said application for stay along with the appeal is not justified.

The Appeal Court below is, therefore, directed to dispose of the said application for stay within a period of four weeks from the date of communication of this order.

It is made clear that this Court has not gone into the merit of the said application, the appeal Court below is free to decide the same in accordance with law.

C.O. 414 of 2021 is disposed of with the above terms without any order as to costs.

C.O. 283 of 2021

The petitioner in the Execution Case levied to execute the decree under the aforesaid appeal filed an application for stay of further proceeding of the said Execution case.

The executing Court by the order dated January 16, 2021 has dismissed the said application.

The petitioner is challenging the said order in C.O. 283 of 2021.

In view of the aforesaid direction for disposal of the application for stay filed by the petitioner in the said appeal, no further order need be passed in the present revisional application.

C.O. 283 of 2021 is accordingly disposed of without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)