

31.08.2021
Item No.15
Ct. No.7
CHC

**C.O.1026 of 2021
(Physical Hearing)**

**Md. Sayab Ali
Vs.
Forman Ali & ors.**

Mr. Sagnik Chatterjee
...for the petitioner

The revisional application is directed against order no.10 dated 20th August, 2019, passed by learned Civil Judge (Junior Division), Lalbagh in Title Execution Case no.6 of 2010 arising out of Title Suit No.280 of 1993, directing the execution proceeding to go ahead for the absence of any stay order being granted by the appellate court, and same is the subject of challenge in this revisional application.

Learned advocate representing the petitioner/JDR submits that against the decree for specific performance of contract, the petitioner/JDR preferred an appeal being T.A.3 of 2010 before the court of learned District Judge, Murshidabad, which is still pending, and on 2nd May, 2011, on the prayer of petitioner/appellant, an extension of interim stay was granted thereby directing the interim stay to be operative till the date of disposal of the appeal.

It is submitted by the learned advocate for the petitioner that the stay order granted by the appellate court was brought to the notice of the executing court, but it was not properly understood in its proper perspective and on the contrary, the executing court for absence of any interim order being granted by Appellate Court proceeded to go ahead with the execution of the decree upon observing the formalities under Order XXI Rule 34 of the Code of Civil Procedure.

It is also submitted that in view of the pendency of the stay order granted by the appellate court, the executing court ought not to have moved ahead so as to give effect to the decree for specific performance of contract till the disposal of the appeal.

Since a small point is involved in this case, for which presence of opposite party/decreed-holder is not necessary and accordingly, service upon the opposite parties is dispensed with.

There may be some miscommunication or misinterpretation with regard to the order passed by the appellate court in connection with T.A.3 of 2010 of learned District Judge, Murshidabad, granting interim stay, which was extended by order dated 2nd May, 2011 till the disposal of the appeal.

Without venturing upon any further enquiry into the matter, the Court is of the view that the purpose

of justice may be best subserved by directing the petitioner to approach the learned executing court below with a copy of the order of the appellate court granting interim stay till disposal of the appeal within a fortnight enclosing therewith a copy of this order.

Learned executing court below upon production of such order of the appellate court will be free to take decisions in accordance with the law so that no prejudice is caused to either of the parties involved in this case.

Since appeal was preferred sometime in 2010, the disposal of the appeal in the given circumstances of the case is extremely necessary.

The appellate court is also directed to dispose of the appeal expeditiously preferably within one year from the date of communication of this order.

Petitioner is directed to make communication of this order to the learned appellate court concerned so that the pending appeal may be disposed of expeditiously.

With this direction/observation, the revisional application, accordingly, stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)

