

18-02-2021
Court No.3
Sh- 04

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI**

C.O. 38 OF 2020

Sri Jayanta Dey. Petitioner.
-Vs-
Pramod Kumar Roy & Ors. Opposite parties.

Mr. Subhasish Misra.
.For the Petitioner.

Let the supplementary affidavit filed in Court today, in terms of the order dated 08.02.2021 be taken on record.

The decree holder has filed the instant application under Article 227 of the Constitution of India challenging an order being No.6 dated July 10, 2019 passed by the learned Civil Judge Junior Division , Siliguri in Title Execution Case No.09 of 2018. An application for stay was filed in connection with Title Execution Case No.9 of 2018.

By the order impugned the Learned Judge of the Court below passed an order of stay of all further proceedings of the Title Execution Case No.9 of 2018 and fixed a date for evidence in connection with the petition under Order 21 Rule 97 of the Code of Civil Procedure. The petitioner, being the decree holder, alleges that he is being resisted and obstructed by the

opposite party Nos. 1 and 2 herein while executing the decree for recovery of possession.

I have heard the learned advocate for the petitioner and perused the materials on record.

It appears from the record that the persons other than the judgment debtors are resisting the petitioner from taking possession by executing the decree. Order 21 of the Code of Civil Procedure is a complete Code by itself. Provisions have been made for adjudication of the right, title and interest of persons in the property that arises between the parties to a proceeding under Order 21 Rules 97,99 and 101 of the Code. The Learned Judge of the Court below fixed a date for evidence in connection with the said application. Unless the further proceeding of the execution case is stayed, the application under Order 21 of the Code will become infructuous. As such the Learned Judge of the Court below was perfectly justified in passing an order of stay of all further proceedings of the execution case.

The order impugned does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

Accordingly, C.O. 38 of 2020 is dismissed without, however, any order as to costs.

Since the decree was passed in the year 2018, the Learned Civil Judge, Junior Division at Siliguri is requested to dispose of the application under Order 21 of the Code as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties on compliance of all requisite formalities.

(HIRANMAY BHATTACHARYYA, J.)