

(7 & 8)
08.07.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 2131 of 2021

With

CO No. 1207 of 2018

Ainuddin Molla

-versus-

Anisur Rahman Molla & ors.

Mr. Kallol Basu,
Mr. Bratin Kumar Dey,
Mr. Apalak Basu,
Mr. Swapnamoy Sarkar, ... for the petitioner.

Mr. Haradhan Banerjee,
Mr. Asit Bhattacharya,
... for the opposite party nos. 1 to 10.

These two revisional applications are arising out of the self-same execution case between the same parties as such both the matters are taken up together for analogous hearing and disposal.

C.O. 1207 of 2018 is directed against the order dated March 07, 2018 and C.O. 2131 of 2021 is directed against the order dated February 19, 2021 passed by the 3rd Court of learned Civil Judge(Junior Division), Alipore, District : 24 Parganas (South) in Misc. Execution Case No. 01 of 1984.

Misc. Case No. 46 of 1973 filed by the predecessor-in-interest of the opposite parties under Section 24 of the West Bengal Non-Agricultural Tenancy Act, 1949 was allowed. The decree of pre-emption passed in the said misc. case was affirmed in revision by this Court and the application seeking review of the said order was not pressed.

The decree of pre-emption after being attained finality as aforesaid, was put into execution giving rise to the connected execution case.

In the execution case the petitioner filed an application under Section 47 of the Code of Civil Procedure which was allowed. The original decree holder aggrieved by the said order initially preferred a misc. appeal which was subsequently converted into a revision. The said revisional application however was allowed thereby the connected execution case was restored.

The petitioner initiated a proceeding under Section 340 of the Code of Criminal Procedure against the original decree-holder alleging that he had tampered the case records and had forged the signature of the learned District Judge in converting the said appeal into a revision.

The said proceeding was dismissed. The petitioner has preferred an appeal against the said order which is pending before the Hon'ble Division Bench of this Court.

The Executing Court by the order impugned in C.O. 1207 of 2018 has refused to stay the further proceedings of the execution case on the ground of pendency of the said appeal and by the order dated February 19, 2021 has refused to stay further proceeding of the said execution case on the ground of pendency of the said revisional application. The said order is under challenge in C.O. 2131 of 2021.

Mr. Kallol Basu, learned counsel appearing for the petitioner, submits that the appeal from the Section 340 of the Cr. P.C. proceeding is pending before a Criminal Court, as such the petitioner is unable to approach the said Court to get an appropriate order of stay of the connected execution case pending before a Civil Court, therefore according to him, the Executing Court is not justified in refusing the prayer of the

petitioner.

Mere pendency of an appeal will not operate as stay. That apart, the said proceeding under Section 340 of the Cr. P.C. has no nexus with the further proceedings of the said execution case, the situation gets clarified from the submission of Mr. Basu that his client cannot approach a Criminal Court for an order of stay of a proceeding pending before a Civil Court.

The Executing Court, therefore, is absolutely justified in refusing the said prayer of the petitioner for such stay on the ground of pendency of the said appeal.

The order dated March 07, 2018 therefore does not call for any interference. C.O. 1207 of 2018 is dismissed without any order as to costs.

In view of the dismissal of C.O. 1207 of 2018, challenge to the order dated February 19, 2021 has become infructuous accordingly, C.O. 2131 of 2021 is also dismissed without any order as to costs.

It is however made clear that this order will not prevent the judgment-debtors to contest the execution case on any defence available to them under the law.

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

(Biswajit Basu, J.)