

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 27 of 2023

Miss Renu Shaw & Anr.
Vs.
Haradhan Ghosh & Ors.

Mr. Asit Baran Raut
Mr. Gautam Das
... For the petitioners

Affidavit of service filed in Court today is taken on record.

None appears on behalf of the opposite parties in spite of service.

The order dated 6th December, 2022 passed by the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta, has been challenged in this application.

By the impugned order, the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta, took up an application for stay filed by the opposite parties/ tenants and an application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure for setting aside the ex parte decree passed on 2nd May, 2016 along with one application under Section 5 of the Limitation Act. From the order impugned, it appears that the decree-holder filed one Misc. Case for police help. From the order

impugned, it further appears that the application under Section 5 of the Limitation Act was allowed condoning the delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure. Considering all the facts and circumstances, the learned Judge stayed the Misc Case for police help till the disposal of the application under Order IX Rule 13 of the Code of Civil Procedure.

Learned advocate appearing on behalf of the petitioners relied on a case of **Barun Samanta v. Rabin Bhakta & Ors.** reported in **2018 (1) ISS 601 (Cal)** and also referred to an unreported decision passed on 18th May, 2017 by a coordinate Bench in connection with **CO 1639 of 2017 (Machuran Bibi & Ors. v. Usha Singh & Ors.)**.

By referring to the decisions cited above, the learned advocate appearing on behalf of the petitioner has submitted that the blanket order of stay should not be promulgated without any condition, particularly, the payment of occupational charges.

Considering all facts and circumstances, it cannot be denied that the learned Judge stayed the Misc Case for police help without any condition only with a view to filing of an application under Order IX Rule 13 of the Code of Civil Procedure.

In **Barun Samanta** (supra), it was held that the executing Court or the appellate Court should not pass the blanket order of stay for execution proceeding in

relation to decree for eviction or recovery of possession without imposing conditions.

In the instant case, I do not find any condition imposed by the learned Judge before staying the execution proceeding, i.e., Misc Case for police help, only because of filing of an application under Order IX Rule 13 of the Code of Civil Procedure in the month of September, 2017 while ex parte decree was passed on 2nd May, 2016. Considering the facts and circumstances, the Court should have imposed condition before staying the proceedings of execution.

In the aforesaid view of the matter, the order dated 6th December, 2022 stands set aside.

The learned Judge-in-Charge, 5th Bench, Presidency Small Causes Court at Calcutta, is requested to re-hear the application for stay in terms of the observations mentioned above, within 15 days from the date of receipt of this order.

With the aforesaid observation, the revisional application, being CO 27 of 2023, stands disposed of.

Let a copy of this order be communicated to the learned Judge-in-Charge, 5th Bench, Presidency Small Causes Court at Calcutta, forthwith.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this

Court without insisting upon production of a certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)