

20.07.2023
Court No.19
Item no. 10
CP

C.O. No. 368 of 2023

Nanda Lal Sahani
Vs.
P.B. Constructions

Mr. Siva Prasad Ghose

...for the Petitioner.

Mr. Arnab Roy
Mrs. Sayani Ahmed

....for the opposite party.

The revisional application is directed against an order dated December 23, 2022, passed by the learned Civil Judge (Junior Division), 2nd Court, Barrackpore.

By the order impugned, the learned court below refused to stay the Ejectment Execution Case No. 29 of 2017. According to the learned court, the power under Order 21 Rule 26 of the Code of Civil Procedure could not be exercised by the said court.

It is submitted that the plaintiff suffered an ex parte decree of eviction on April 3, 2017. The plaintiff filed an application under Order 9 Rule 13 of the Code. The said application is still pending. In the meantime, if the execution proceeds, the plaintiff will suffer irreparable loss and injury, inasmuch as, he will not be able to get his application under Order 9 Rule 13 of the code heard out and his challenge to the ex parte decree will be frustrated.

It appears that the application under Order 9 Rule 13 was filed sometime in November 2022, i.e. almost five years after the decree was passed.

It is the contention of Mr. Ghose, learned advocate for the petitioner, that the petitioner was unaware of the decree as summons of the suit had not been issued. However, these are the issues which will be decided in the Order 9 Rule 13 application if the same is admitted and taken up for hearing.

It is pointed out that no application for condonation of delay in filing the application under Order 9 Rule 13 has been filed.

Under such circumstances, although this court was mindful of passing an interim order staying the execution upon imposing conditions, but under the facts and circumstances, stated hereinabove, when there is no existence of of a misc. case at all, such stay cannot be granted. Unless the delay is condoned the Misc case cannot be registered.

The petitioner is at liberty to take steps in the misc. case in accordance with law, by filing an application under Section 5 of the Limitation Act for condonation of delay. The same shall be heard on merits.

If such application is allowed on contest, the petitioner will be at liberty to pray for stay of the execution in the misc. case itself. The petitioner may

pray for an adjournment in the execution case in the meantime, if permissible in law.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)