

Item No. 11
13.12.2023
Court. No. 19
GB

C.O. 777 of 2023

Smt. Basanti Sardar
Vs.
Sri Nirapada Sardar

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das

...for the Petitioner.

Despite the best efforts of the Court and the petitioner, to secure attendance of the opposite parties, none appears even today. Affidavit-of-service is taken on record.

The revisional application arises out of an order dated February 24, 2023 passed by the learned Additional District Judge, Fast Track 1st Court at Diamond Harbour, District 24 Parganas (South) in Misc. Case No.01 of 2022 which had been filed in connection with Title Appeal No.47 of 2016. The title appeal arises out of a judgment and decree in Title Suit No.20 of 2010. The decree-holder/opposite party put the decree into execution, being Execution Case No.7 of 2014.

It appears that Title Appeal No.47 of 2016 was dismissed for default by an order dated November 22, 2019. Aggrieved by the said dismissal, Misc. Case No.01 of 2022 was filed along with an application under Section 5 of the Limitation Act.

The petitioner prayed for stay of the execution till disposal of the pending applications. The learned lower appellate court refused to pass any stay. The petitioner was

already enjoying a stay of the execution, till the appeal was dismissed for default.

For the ends of justice, this Court is of the view that till the application under Section 5 of the Limitation Act is heard and disposed of, the execution should be stayed or else, the right of the petitioner to pursue the remedy before the appellate forum would be negated at the very inception, without the court having considered as to whether there was any merit in the prayer for readmission of the appeal upon condonation of delay.

The order impugned in set aside.

The learned Additional District Judge, Fast Track 1st Court at Diamond Harbour, District 24 Parganas (South) is directed to dispose of the application under Section 5 of the Limitation Act, filed in connection with Misc. Case No.01 of 2022 within a period of two months from the next date fixed upon granting opportunity to the opposite party to contest the proceeding by filing a written objection. Till the disposal of the said application, there shall be stay of the execution proceeding.

On the outcome of the said application, the learned court shall pass further orders and if the petitioner is unsuccessful in the application under Section 5 of the Limitation Act, the interim stay shall stand vacated and the execution shall proceed.

This court has not gone into the merits of the pending applications and the misc. case.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)