

23.06.2023
Sl. No.2(DL)
srm

C.O. No. 1837 of 2023

**Sri Partha Sarathi Purokayastha
Versus
Sisir Kumar Banerjee**

Mr. Sovan Mukherjee

...for the Petitioner.

Mr. Ivan Roy,
Mr. Debangshu Bandhu

...for the Opposite parties.

Affidavit-of-service is taken on record.

The petitioner has suffered an *ex parte* decree in Title Suit No.173 of 2017 from the court of the learned Civil Judge (Junior Division), 2nd Court at Barrackpore.

Initially, the suit proceeded in Sealdah court, but thereafter due to bifurcation of jurisdiction the decree was drawn up in Barrackpore. The execution case, namely, Title Execution Case No.14 of 2021 is pending before the learned Civil Judge (Junior Division), 2nd Court at Barrackpore. The petitioner filed an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the *ex parte* decree. The petitioner also prayed for stay of the execution case. The learned court below rejected the prayer for stay of the execution on the ground that the decretal court which was

also the executing court, did not have any power to stay the proceedings.

This finding of the learned court below is erroneous and incorrect. The same suffers from material irregularity. The order dated March 18, 2023 is set aside.

There shall be unconditional stay of all further proceeding in Title Execution Case No.14 of 2021, provided the petitioner deposits occupation charges amounting to Rs.4,000/- per month starting from July, 2023 month by month every month within the 7th of every month.

Subject to final adjudication and outcome of the suit, the petitioner will deposit a sum Rs.50,000/- in the learned Executing Court within August 16, 2023 towards arrears. In case of default on the part of the petitioner to pay any amount, the stay shall stand vacated and the learned court below shall proceed accordingly.

The application under Order IX Rule 13 of the Code of Civil Procedure shall be disposed of within three months from the next date fixed.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)