

25.07.2023
Sl. No.13(DL)
srm

C.O. No. 2274 of 2023
Md. Mahiruddin Mondal
Versus
Manik Mondal & Ors.

Mr. Asis Bhattacharyya

...for the Petitioners.

This revisional application has been filed challenging an order dated June 14, 2023 passed by the learned Additional District Judge, 1st Court at Bongaon, North 24-Parganas, in Misc Appeal No.18 of 2023. Misc. Appeal No.18 of 2023 was filed by the petitioner being aggrieved by an order dated May 20, 2023. The order dated May 20, 2023 was passed in Title Execution No.13 of 2016, by the learned Civil Judge (Junior Division) at Bongaon, North 24-Parganas. The learned executing court refused to stay the execution proceeding. Thereafter, misc. appeal was preferred. The misc. appeal was also dismissed.

Hence, this revisional application has been filed.

It appears that the learned lower appellate court upheld the order of the learned executing court on the following grounds:

- (a) That there was no existence of Title Appeal No.10 of 2016 which was filed by the petitioner being

aggrieved by the judgment and decree passed by the learned trial court. The said appeal was dismissed for default on November 17, 2022.

(b) The application for restoration of the appeal was still to be decided.

(c) An order for delivery of possession with police help was already passed and it would not be proper to pass orders by recalling the writ issued in Title Execution No.13 of 2016.

It is submitted by the learned Advocate for the petitioner that the Title Appeal has been restored. If the proceedings are not stayed, after restoration of the title appeal, the right of the petitioner to contest the title appeal will be denied if the possession is delivered in the meantime.

This Court does not find any reason to interfere with the order impugned. This Court is also of the view that the proper course for the petitioner would be to approach the learned court before which the title appeal is pending, for issuance of an order of stay of the execution. If such application is filed, the same shall be disposed of in accordance with law, upon granting opportunity to the concerned parties to contest such application.

It is made clear, that the learned court below must act expeditiously.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)