

25.09.2023
Sl. No.6(DL)
srm

C.O. No. 2938 of 2022
Siddhartha Das & Anr.
Versus
Merino Exports Pvt. Limited

Mr. Debanik Banerjee,
Mr. Avash Ganguly

...for the Petitioners.

This Court finds that the learned District Judge at Alipore passed an order on February 25, 2022 granting a limited stay of the Title Execution Case No.07 of 2015 which is pending before the learned Civil Judge (Senior Division), 1st Court at Alipore. The judgment and decree passed by the learned trial Judge in Title Suit No.57 of 2008 was challenged by way of a Title Appeal No.279 of 2011. Title Appeal No.279 of 2011 was dismissed for non-compliance of the court's order. Thereafter, an application was filed for re-admission of the appeal along with an application under Section 5 of the Limitation Act. Another application under Section 151 of the Code of Civil Procedure was filed praying for stay of further proceedings in Title Execution Case No.07 of 2015.

The learned lower appellate court invoked the inherent power under Section 151 of the Code of Civil Procedure and

passed an interim order of stay of the execution case initially for a period of 15 days.

Mr. Banerjee, learned Advocate appearing on behalf of the petitioners submits that during the pendency of the application under Section 5 of the Limitation Act and when the appeal had not been re-admitted, the learned court below erred in allowing such order of stay. It is further contended by Mr. Banerjee that the stay ought not to have been granted without affording an opportunity to the petitioners to oppose such prayer when the appeal had been dismissed long before and steps had not been taken for re-admission of the same.

This Court is of the view that the contention of Mr. Banerjee should be heard out by the learned lower appellate court while disposing of the application under Section 151 of the Code of Civil Procedure. Pendency of the revisional application will cause further delay in the matter. The petitioners are at liberty to file their written objections to the application under Section 151 of the Code of Civil Procedure. The said application shall be disposed of within two days from the next date fixed. The issues to be decided would be whether the learned lower appellate court was justified in passing the order of stay of the execution case without service of notice upon the respondents therein, especially because the appeal

had been dismissed for non-compliance and no orders with regard to re-admission of the same had been passed. The application for re-admission of appeal also appears to be time barred.

Upon disposal of application under Section 151 of the Code of Civil Procedure, the application under Section 5 of the Limitation Act in filing an application for re-admission of the appeal which had been dismissed for non-compliance of the order of court, shall also be disposed of in accordance with law, mandatorily within a period of one month from the date of reopening of the court after Puja vacation. Written objections will be filed by the petitioners in the meantime. This court has not expressed any opinion on the merits of the pending applications.

The learned lower appellate court will proceed independently and in accordance with law.

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.)