

15.04.2024
Ct. No. 19
Items 31&32
Cp

C.O. No. 155 of 2024
Sri Rajendra Prasad Chowdhury
Versus
Sk. Jakir Hossain
With
C.O. No. 2503 of 2022
With
IA NO: CAN/1/2023 (not in file)
Sk. Jakir Hossain
Versus
Sri Rajendra Prasad Chowdhury

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. R. Ahmed
Mr. Soumava Santra

...for the petitioner
in C.O. No. 155 of 2024
and for the Opposite Party
in C.O. No. 2503 of 2022

Mr. Arun Kumar Das

...for the petitioner
in C.O. No. 2503 of 2022

Re: C.O. No. 2503 of 2022

1. This revisional application arises out of an order dated June 10, 2022, passed by the learned Civil Judge (Junior Division), 1st Court, Contai in connection with a stay application filed by the judgment debtor under Section 151 of the Code of Civil Procedure in Other

Execution Case No. 03 of 2020, arising out of judgment and decree passed in O.S. No. 294 of 2015.

2. By the order impugned, the learned executing Court rejected an application under Section 151 of the Code of Civil Procedure. The court recorded that one year had passed since the execution proceeding had been initiated. No sufficient cause had been shown for staying the execution proceeding. Moreover, an appeal was pending from the judgment and decree. The provisions of Order 41 Rule 5 of the Code of Civil Procedure empowered the learned appellate court to pass necessary order of stay of execution upon such terms and conditions as the learned appellate court deemed fit and proper. The learned executing Court was of the view that the court was denuded of any power to pass an order of stay of the execution proceeding.
3. Mr. Arun Kumar Das, learned advocate appears before this court on behalf of the petitioner and submits that his client has not contacted him. The learned advocate wishes to retire from the brief. By an order dated April 3, 2024, this court had directed that this revisional application would appear along with C.O. 155 of 2024. The learned advocate on record in C.O. 155 of 2024 was directed to serve notice and also the application upon the petitioner of C.O. 2503 of 2022. Accordingly, service was sought to be effected upon the opposite

party. The opposite party refused service. The affidavit of service is taken on record. The affidavit of service records such refusal. The track report downloaded from the Indiapost.com has been annexed. Refusal is good service. Thus, even if the learned advocate on record for the petitioner Sri. Arun Kumar Das wishes to retire from the brief, there is no impediment on the part of this court to proceed with the disposal of the revisional application.

4. In the absence of the petitioner, this court dismisses the application being C.O. No. 2503 of 2022 for want of prosecution, with liberty to the petitioner i.e., Sk. Jakir Hossain/judgment debtor to pray for stay of execution in the pending appeal. Such prayer, if made, shall be disposed of by the learned appellate court, in accordance with law and expeditiously, upon such terms as the learned appellate court deems fit.
5. In view of disposal of the revisional application, IA NO: CAN/1/2023 is also disposed of.

Re: C.O. No. 155 of 2024

6. This is an application for expeditious disposal of Other Execution Case No. 3 of 2020, arising out of judgment and decree dated December 20, 2019 in connection with Other Suit No. 294 of 2015, which is pending before the learned Civil Judge (Junior Division), 1st Court, Contai.

7. The prayer of the petitioner is innocuous. Neither party stands to lose if a proceeding is disposed of expeditiously. In fact, such expeditious disposal shall enure to the benefit of the parties. Despite service none appears. Affidavit of service indicates that service of the revisional application was refused.
8. The revisional application is disposed of with a request upon the learned executing Court to make sincere endeavour to dispose of the execution case within six months from the next date fixed, in accordance with law, unless there is an order of stay of the execution passed by the appellate court or any other higher forum. Adequate opportunity shall be granted to the parties to contest the execution proceeding.
9. This court has not expressed any opinion on the merits of the Case. The learned court shall proceed independently and in accordance with law.
10. Sk. Jakir Hossain shall be at liberty to take all expeditious steps for stay of the execution by approaching the learned appellate court.
11. Thus, both the revisional applications are accordingly disposed of.

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

(Shampa Sarkar, J.)