

D/L- 13
17/04/2025
Ct. No.-6
Aritra

C.O. 1292 of 2025

**Haridwar Kharwar
Vs.
Pawan Bhiwaniwala & Anr.**

Ms. Sonia Sharma
Mr. Anirban Saha Ray
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the decree holder challenging an order dated March 19, 2025 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta in Miscellaneous Case No.3658 of 2024.

The opposite party No.1 filed an application under Order 21 Rule 97, 99 and 101 of the Code of Civil Procedure in connection with the Title Execution Case No.60 of 2023. In connection with the said miscellaneous case the said opposite party No.1 filed an application for stay of all further proceedings in the execution case. The learned Executing Court, by the order impugned, passed an order of stay of all further proceedings in the execution case.

Order 21 Rule 101 of the Code of Civil Procedure states that all questions, (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to

the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

It is not in dispute that the opposite party No.1 herein was not a party in the suit. A separate suit at the instance of a third party is barred under Order 21 Rule 101 of the Code of Civil Procedure.

This Court is of the considered view if the execution case is allowed to proceed, the miscellaneous case will become infructuous.

For such reason this Court holds that the learned Executing Court was right in passing an order of stay of all further proceedings of the execution case.

At this stage, the learned advocate appearing for the petitioner submits that the hearing of the miscellaneous case be expedited.

The learned Judge, 12th Bench, City Civil Court at Calcutta is requested to take up the hearing of the Miscellaneous Case No.3658 of 2024 after the same is made ready for hearing and make an endeavor to see that the same is disposed of as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

For the aforesaid reasons CO 1292 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)