

Sl. 5 & 6
01.05.2025
Court No.6
BP

C.O. 1455 of 2025

M/s. Triveni Holdings Pvt. Ltd. & Anr.
-versus-
Sourav Roy

with

C.O. 1456 of 2025

Mr. Anirban Das
..for the petitioners

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Rudranil Das
..for the opposite party

These civil revisional applications are taken up for analogous hearing as the same arise out of the self same title execution case.

C.O. 1456 of 2025 is at the instance of the judgement debtors and is directed against an order dated November 30, 2024 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat in Title Execution Case No. 12 of 2023. By the order impugned in C.O. 1456 of 2025 the application filed by the petitioners herein under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure praying for recalling of P.W.1 at the instance of the judgement debtors stood rejected.

C.O. 1455 of 2025 is also at the instance of the judgement debtors and is directed against the order dated March 27, 2025 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat in Title Execution Case No. 12 of 2023. By the order impugned in C.O. 1455 of 2025 the prayer of the petitioners praying for a direction upon the decree holder or the seal bailiff to supply the name of the first witness stood rejected.

Mr. Das, learned advocate appearing for the petitioner submits that the petitioner filed an application for recalling of the seal bailiff in order to put certain questions to him which, through inadvertence, could not be put at the time when the seal bailiff was cross-examined by the judgement debtors. He further submits that the answer to such questions are very much necessary for the purpose of effective adjudication of the application under Rule 208 of the Civil Rules and Orders. He further submits that the name of the first witness in the report of the bailiff is not very legible and for such reason the petitioners filed the application praying for a direction either upon the decree holder or upon the seal bailiff to supply the name and particulars of the first witness.

Per contra, Mr. Mukherjee, learned advocate appearing for the decree holder opposite party herein submits that this is an attempt to stall the execution of

a decree after the petitioners have lost before all forum including the Hon'ble Supreme Court of India. He further submits that the petitioners herein prayed for time to vacate and hand over vacant possession of the premises before the Hon'ble Supreme Court and pursuant to such prayer the Hon'ble Supreme Court granted time to vacate. He submits that the petitioners herein did not file any undertaking as per the direction passed by the Hon'ble Supreme Court.

Heard the learned advocates for the parties and perused the materials placed.

Before entering into the merits of the dispute involved in these civil revisional applications it would be relevant to take note of certain facts leading to the passing of the orders impugned in these civil revisional applications.

The mother of the opposite party herein filed a suit for declaration of title and recovery of khas possession being Title Suit No. 74 of 2011. The said suit, however, stood dismissed by judgement and decree dated June 15, 2016 and being aggrieved against such judgement and decree the predecessor in interest of the opposite party herein preferred a First Appeal being FAT 380 of 2016 before this Hon'ble Court. The said appeal which was subsequently renumbered as FA 212 of 2016 was allowed by a judgement and decree dated February 16, 2023 thereby directing the petitioners herein to

hand over possession of the suit property in favour of the opposite party herein within the time limit stipulated in the said judgement and decree. Since the judgement debtors/petitioners herein failed to deliver vacant and khas possession of the decreetal property pursuant to the judgement and decree passed in the first appeal the decree was put into execution giving rise to Title Execution Case No. 12 of 2023. The petitioners herein preferred a special leave petition before the Hon'ble Supreme Court which was registered as Special Leave Petition (Civil) Diary No(s) 26647 of 2023. The said special leave petition was dismissed by the Hon'ble Supreme Court by an order dated December 8, 2023.

After going through the order dated December 8, 2023 this Court finds that the Hon'ble Supreme Court after hearing the learned advocates for the petitioners were not inclined to interfere. However, the petitioners were granted six months time from the date of passing of such order to vacate and hand over vacant possession of the premises in question subject to filing the usual undertaking within three weeks from the date of passing of the said order before the Registry of the Hon'ble Supreme Court. It is not in dispute that no undertaking pursuant to the direction passed by the Hon'ble Supreme Court was filed by the petitioners herein. Thereafter the petitioners filed a miscellaneous case under Order 21 Rule 97 to 101 of the Code of Civil

Procedure which was registered as Mis. Case No. 30 of 2024. The learned Executing Court by an order dated August 14, 2024 dismissed the said miscellaneous case upon holding that the same is not maintainable. Thereafter the judgement debtors filed one review application being Mis. Case No. 98 of 2024 which was dismissed by an order dated March 13, 2025.

Thereafter an application under Section 47 of the Code of Civil Procedure being Mis. Case No. 140 of 2024 was filed which also stood dismissed by an order dated February 28, 2025. In the meantime an application under Rule 208 of the Civil Rules and Orders was filed and in connection with such application the seal bailiff was examined. The judgement debtors cross-examined the seal bailiff extensively on 6th July, 2024, July 20, 2024 and August 3, 2024. After an extensive cross-examination of the seal bailiff the seal bailiff was discharged on 3rd August, 2025. At this stage the petitioners filed an application under Order 18 Rule 17 of the Code of Civil Procedure.

After going through the said application this Court finds that it has only been stated that due to bona fide mistake some pertinent questions which were required to be asked were not asked and some suggestions were not made to the P.W.1. However, the questions with the petitioners seek to put to the seal bailiff upon recall has not been specifically stated in the

said application. On a query of the Court the learned advocate appearing for the petitioners also could not apprise this Court as to the points on which the petitioners seek to cross-examine the seal bailiff on recall.

After going through the order dated November 30, 2024 passed by the learned Executing Court this Court is of the considered view that the learned Executing Court was right in rejecting the application filed by the petitioners herein praying for recall of the seal bailiff.

The petitioners also filed an application praying for a direction upon the decree holder and the seal bailiff to supply the name and the proper address of the first witness. After going through the evidence of the seal bailiff this Court finds that the judgement debtors, at the time of cross-examination of the seal bailiff, did not point out any such infirmity in the report of the seal bailiff. The learned trial judge was right in holding that the judgement debtors at the time of cross-examination did not point out any such infirmity in the report of the bailiff at the time of cross-examination of the P.W.1.

To the mind of this Court the learned trial judge was right in holding that the judgement debtors got opportunity to put questions to the seal bailiff regarding the matter in issue but the judgement debtors did not avail that opportunity. The learned Executing Court assigned cogent reasons for rejecting the prayer of the

petitioners for recalling the seal bailiff as well as for a direction upon the decree holder or the seal bailiff for supplying the name and address of the first witness.

For all the aforesaid reasons, this Court is not inclined to interfere with the orders impugned.

After this order was passed Mr. Mukherjee, learned advocate appearing for the opposite party submits that the execution case was stalled at various points of time at the instance of the judgement debtors and a direction should be passed upon the learned Executing Court to dispose of the execution case expeditiously. He further submits that 12th May, 2025 has been fixed for evidence of the judgement debtors, if any, as a last chance.

In view thereof, the learned Civil Judge (Senior Division), 3rd Court at Barasat who is in-charge of the learned Civil Judge (Senior Division), 2nd Court at Barasat is requested to take up the hearing of the Title Execution Case No. 12 of 2023 on the next date fixed i.e. on 12th May, 2025 and to dispose of the same as expeditiously as possible but preferably by the end of the month of July, 2025 without granting any unnecessary adjournment to either of the parties.

With the above observations and directions, C.O. 1455 of 2025 and C.O. 1456 of 2025 stand dismissed.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)