

C.O. 2049 of 2025

Sri Nripendra Chandra De, (since deceased), represented by his legal
heirs and representatives, Sri Debabrata Dey & Anr.

Versus

Sri Satyendra Kumar Jain & Ors.

Mr. Shibendra Nath Chattopadhyay,
Ms. Gargi Acharya

...For the Petitioners

Mr. Debjit Mukherjee,
Ms. Priyanka Jana

...for KMC

This application under Article 227 of the Constitution of India is at the instance of the decree holder and is directed against an order being no. 76 dated 04.04.2025 passed by the learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta in Misc. Case No. 77 of 2024.

By the order impugned, the Ejectment Execution Case was stayed till the disposal of the Misc. Case No. 77 of 2024.

Learned advocate appearing for the petitioner submits that a Coordinate Bench of this Court passed a judgment on February 29, 2024, in C.O. 408 of 2012 directing the learned Court to dispose of the execution case as expeditiously as possible, preferably within six months from the date of communication of the said order.

Learned advocate appearing for the petitioner submits that the order of stay of the execution case amounts to sitting over the judgment of this Court.

The opposite party no. 1/third-party filed an application under the provisions of Order 21 Rule 97 to 101 of the Code of Civil Procedure which was registered as Misc. Case No. 77 of 2024. 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 any other law for the time being in force be deemed to have been jurisdiction to decide such questions.

Thus, a question relating to right, title and interest in the property raised by a third-party to a suit has to be determined in a Misc. Case under the provisions of Order 21 Rule 97 or Rule 99 and a separate suit is barred.

Order 21 Rule 103 states that where any application has been adjudicated upon Rules 98 or 100,

the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

For such reason, this Court is of the considered view that the Misc. Case under Order 21 Rules 97 to 100 is to be disposed of prior to disposing of the execution case. To the mind of this Court, learned Executing Court was right in passing an order of stay of the execution case till the disposal of the Misc. Case. An order passed by this Court directing expeditious hearing of an execution case cannot take away the right of a party to have his rights adjudicated in a proceeding under Order 21 Rule 97 or Rule 99 of the Code of Civil Procedure.

For the reasons as aforesaid, **C.O. 2049 of 2025** stands dismissed.

However, there shall be or order as to costs.

(Hiranmay Bhattacharyya, J.)