

D/L- 10
15/07/2025
Ct. No.-6
Aritra

C.O. 2440 of 2025

**George Clayton Dixon & Anr.
Vs.
Kaushalya Rani Charity Trust & Ors.**

Mr. Rohit Das
Mr. Indradip Das
Mr. Anugraha Sundas

...for the petitioners

Mr. Supriyo Chattopadhyay
Mr. Sudip Kumar Maity
Ms. Debosri Chatterjee

....for the opposite parties

Mr. Santosh Kumar Pandey

....for the opposite party No.4/caveator

This application under Article 227 of the Constitution of India is at the instance of a third party/applicant in a miscellaneous case under Order 21 Rule 97 to 101 of the Code of Civil Procedure and is directed against an order dated June 26, 2025 passed by the learned Judge, 6th Bench, City Civil Court at Calcutta in Miscellaneous Case No.7608 of 2025 arising out of Title Execution Case No.10 of 2025.

By the order impugned the prayer for ad interim stay of all further proceedings of the title execution case stood rejected.

The learned advocate appearing for the petitioners submits that the petitioner is running a restaurant business in the decretal property after obtaining requisite licenses from various authorities. He submits

that the opposite party Nos.1, 2 and 3 herein obtained a collusive *ex parte* decree against the opposite party No.4 and in the garb of executing the said decree is trying to oust the petitioner from the decreetal property. He further submits that the opposite parties are well aware that the petitioner is running a restaurant business in the decreetal property since long.

Mr. Chattopadhyay, learned advocate appearing for the opposite parties seriously disputes the submission made by the learned advocate for the petitioner. He submits that the petitioner is not in possession of the decreetal property. He submits that the petitioner could not produce any documents in relation to the decreetal property. He submits that the learned judge of the executing court was right in rejecting the ad interim prayer for stay.

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

After going through the civil revision application, this Court finds that the petitioner has produced several documents in support of their claim that they are in possession of Premises No.7/1A, AJC Bose Road and is carrying on business under the name and style Sher-E-Punjab. Mr. Chattopadhyay would contend that the said document does not bear the shop room number. However, the fact remains that the documents annexed to this civil revision application which were part of the

record before the learned Executing Court goes to show that at Premises No.7/1A, AJC Bose Road a restaurant business under the name and style M/s. Sher-E-Punjab is being running. As to whether the said business is run from the decreetal property or from any other portion of Premises No.7/1A, AJC Bose Road, Kolkata-700017 cannot be decided at this stage.

The opposite party Nos.1, 2 and 3 filed a suit for eviction claiming that that the opposite party No.4 was a trespasser in respect of two shop rooms bearing shop room Nos.18 and 19. The petitioner herein claims to be in possession of the decreetal property.

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.

Order 21 Rule 103 of the Code states that where any application has been adjudicated upon under Rule 98 or Rule 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.

Thus, it is evident that during pendency of an execution application, a third party claiming right, title or interest in respect of a decreetal property has to approach the Executing Court under the provisions of Order 21 Rule 97 to 101 of the Code of Civil Procedure and a separate suit at the instance of such third party is barred. Rule 101 also states that all questions relating to right, title or interest shall be adjudicated on such application.

In the case on hand the petitioner is claiming independent right, title and interest in respect of the decreetal property.

For such reason this Court is of the considered view that if during the pendency of such a miscellaneous case the execution proceeding is allowed to proceed and the decree-holder obtains possession by executing the *ex parte* decree, the petitioner/third party would suffer irreparable loss and injury.

For such reason this Court is inclined to pass an order of stay of all further proceedings in the execution case.

At this stage Mr. Chattopadhyay, learned advocate appearing for the opposite parties submits that the order of stay should be for a limited period and direction be passed upon the learned Executing Court to dispose of

the miscellaneous case expeditiously. From the impugned order it appears that July 25, 2025 has been fixed for service returns and acknowledgement due. Mr. Chattopadhyay assures this Court that the opposite parties herein shall enter appearance in the Miscellaneous Case No.7608 of 2025 on or before the next date fixed in the Executing Court.

It will be open to the opposite parties herein to file a written objection to the miscellaneous case within a fortnight from the date fixed for appearance in the miscellaneous case.

The learned Judge, 6th Bench, City Civil Court at Calcutta is requested to make an endeavour to see that the Miscellaneous Case No.7608 of 2025 is disposed of as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

There shall be an order of stay of all further proceedings in Title Execution Case No.10 of 2025 pending before the learned Judge, 6th Bench, City Civil Court at Calcutta till the end of the month of November, 2025 or until further orders that may be passed by the Executing Court.

The petitioner will be at liberty to approach the learned Executing Court for extension of the order of stay if the occasion so arises.

With the above observations and directions, CO 2440 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.)