

11.08.2025  
Item No.17.  
Court No.06.  
S. De  
265719

**C.O. 2880 of 2025**

**Narayan Industries.  
Vs  
Debasis Mustafi & Ors.**

Mr. Tanmoy Kr. Mukherjee,  
Mr. Anirban Roy, ...for the petitioner.

This application under Article 227 of the Constitution of India is at the instance of the 3<sup>rd</sup> party/applicant in Misc. Case No. 58 of 2025 filed under the provisions of Order 21 Rule 99 of the Code of Civil Procedure and is directed against an order being no.2 dated 17.07.2025 passed by the Civil Judge, Junior Division, 1<sup>st</sup> Court at Sealdah, South 24 Parganas.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the learned Judge of the Executing Court directed the petitioner to pay occupational charges of Rs.1,00,000/- to the decree holder. However, in the next paragraph, the learned Judge of the Executing Court observed that on non-payment of one instalment, the order of stay would be vacated automatically. Mr. Mukherjee submits that the sum of Rs.1,00,000/- has been paid by the opposite party by way of an account payee cheque drawn in favour of the Debasis Mustafi on State Bank

of India, Narkeldanga Branch dated July 18, 2025. Mr. Mukherjee submits that the impugned order does not clarify as to whether the petitioner has to pay the occupational charges of Rs.1,00,000/- as a consolidated amount or Rs. 1,00,000/- per month. He further submits that the learned Judge of the Executing Court without appreciating that occupational charges should not be directed to be paid directly to the decreeholder but the same has to be deposited before the executing Court directed the petitioner to pay the occupational charges directly to the opposite party no.1 herein.

In support of the contention that the occupational charges should be deposited and not to be paid to the decree holder, Mr. Mukherjee places reliance upon a decision of a co-ordinate Bench in the case of ***Electric Construction & Equipment Company Ltd. Vs. Raj Luxmi Investment & Trading Company Ltd.*** reported in ***2016 SCC OnLine Cal 8287***.

It prima facie. appears to this Court that the order did not clarify as to whether the occupational charges of 1,00,000/- is a one time consolidated amount or the same is to be paid month by month. The petitioner also did not raise any objection as to whether the occupational charges should be directed

to be deposited in Court or to be paid directly to the decree holder.

Accordingly, this Court is of the view that liberty be given to the petitioner to approach the learned Judge of the Executing Court with an appropriate application in that regard.

C.O. No.2880 of 2025 stands disposed of by giving liberty to the petitioner to file an appropriate application before the learned Judge of the Executing Court on the aforesaid issues. If such an approach is made, the learned Judge of the Executing Court shall consider such application and dispose of the same in accordance with law after giving an opportunity of hearing to the respective parties and by passing a reasoned order.

The petitioner will be at liberty to communicate this order to the learned Judge of the Executing Court.

**(Hiranmay Bhattacharyya, J.)**