

D/L- 38
26/08/2025
Ct. No.-6
Aritra

C.O. 3105 of 2025

**Sri Giridhari Barik
Vs.
Sri Tapan Mondal**

Mr. Soumen Kumar Dutta
Mr. Subham Dutta

....for the petitioner

Mr. Monojit Bhattacharyya
Mr. Diptoraj Chakraborty

....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of an applicant in a miscellaneous case under Order 21 Rule 101 of the Code of Civil Procedure and is directed against an order being No.245 dated July 18, 2025 passed by the learned Civil Judge (Jr. Div.), 1st Court, Contai, District-Purba Medinipur in J. Misc. Case No.25 of 2022.

By the order impugned, the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and the application under Order 39 Rule 7 of the Code of Civil Procedure stood rejected.

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

The petitioner filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for an order of injunction restraining the opposite parties and his men and agents from making any construction on the decretal property during the pendency of the

miscellaneous case. Such application has been dismissed only on the ground that an order has been passed in exercise of powers under Article 227 of the Constitution of India directing the Executing Court to dispose of the execution case expeditiously. A direction for expeditious hearing of an execution case cannot take away the right of a party to file an application for injunction if he is otherwise entitled to. Such applications ought not to have been rejected on the ground that this Court passed an order directing the execution case to be disposed of expeditiously.

The learned trial judge also rejected the application under Order 39 Rule 7 of the Code of Civil Procedure upon holding that the same was filed in order to delay the hearing of the J. Misc. Case. The learned trial judge did not decide the application for local inspection on merits.

For such reason, this Court is inclined to interfere with the order impugned.

Accordingly, the order dated July 18, 2025 is set aside.

The learned Civil Judge (Jr. Div.), 1st Court, Contai, District-Purba Medinipur is requested to decide the applications under Order 39 Rule 1 and 2 of the Code and the application under Order 39 Rule 7 of the Code of Civil Procedure filed in J. Misc. Case No.25 of 2022 afresh after giving an opportunity of hearing to the respective parties and by passing a reasoned order.

The learned trial judge is requested to dispose of the said applications as expeditiously as possible but preferably within a period of four (4) weeks from the date of receipt of a server copy of this order without granting unnecessary adjournment to either of the parties.

With the above observations, CO 3105 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.)