

Court No. 6
(265719)

26.09.2025
(AD 45)
(S. Banerjee)

CO 3628 of 2025

Peter Sarkar & Ors.
Vs.
Abdul Rashid

Mr. Pratim Mukherjee
Ms. Chaitali Mukhopadhyay
Mr. Purnankar Biswas

...for the petitioners

Mr. Kaushik Dey
Mr. Debdipto Banerjee
Mr. Soumen Banerjee

...for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the judgment-debtor and is directed against order dated September 15, 2025 passed by the learned Civil Judge (Jr. Division), 2nd Court at Sealdah in Title Suit No. 446 of 2018. By the order impugned, the prayer for stay of all further proceedings of the Title Execution Case No. 6 of 2023, stood rejected.

Learned trial judge rejected the prayer for stay on the ground that the application under Section 5 of the Limitation Act in connection with the Misc. Case under Order 9 Rule 13 of the Civil Procedure Code is still pending.

Learned advocate appearing for the petitioners submits that the decree may be executed at any point

of time as the police cost which was directed to be deposited, has already been deposited and the petitioners may be evicted at any point of time.

Mr. Dey, learned advocate appearing for the opposite party submits that the petitioners are in occupation of a property situated in the heart of the city of Kolkata. The suit property is situated near the Sealdah station and several hospitals, schools etc. He submits that an unconditional order of stay of all further proceedings of the execution case cannot be passed. He further submits that the present market rate of rent of the property is more than Rs. 20,000/- per month and the petitioner should be directed to pay occupation charges at market rate.

However, considering the fact that the application under Section 5 of the Limitation Act is fixed for hearing on November 15, 2025 and the police cost has already been deposited, this court is of the considered view that unless an order of stay of the title execution case is passed, the misc. case will become infructuous. But at the same time the petitioners should be directed to pay a lump sum amount on account of occupation charges in the meantime as a condition for grant of an order of stay.

There shall be an order of stay of all further proceedings in Title Execution Case No. 6 of 2023

pending before the learned Civil Judge (Jr. Division), Sealdah till the end of the month of November, 2025 or until further order, whichever is earlier, subject to payment of a lump sum amount of Rs. 50,000/- on account of occupation charges to the opposite party in two equal instalments and the first of such instalments shall be paid by the petitioner to the opposite party on or before October 31, 2025 and the last instalment shall be paid on or before November 15, 2025.

The opposite party is directed to file the written objection under Section 5 of the Limitation Act on or before October 31, 2025.

There shall be an unconditional stay of all further proceedings of Title Execution Case till October 31, 2025. If the first instalment is paid on or before the said date, the order of stay shall continue till November 15, 2025 and if the last instalment is paid on or before November 15, 2025, the order of stay shall continue till the end of the month of November, 2025.

The learned trial judge is requested to take up the hearing of application under Section 5 of the Limitation Act on the next date fixed, i.e., on November 15, 2025 and to dispose of the same as expeditiously as possible, preferably on or before the

end of the month of November, 2025, without granting any unnecessary adjournment to either of the parties.

It is, however, made clear that the consolidated amount of occupation charges has been fixed taking note of the special facts and circumstances of this case that the police cost has already been deposited. If for any reason whatsoever the application under Section 5 of the Limitation Act cannot be disposed of within the time limit mentioned hereinbefore, the petitioners will be at liberty to pray for extension of the order of stay and the opposite party will also be at liberty to pray for further occupation charges at the market rate.

With the above observations and directions, CO 3628 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)