

Court No. 6

(265719)

24.10.2025

(AD 11)

(S. Banerjee)

CO 3690 of 2025

Ashok Saha & Anr.

Vs.

Sri Rajib Kumar Talukdar

Mr. Amit Kumar Gupta
Mr. Santanu Mukherjee

...for the petitioners

Mr. Tarak Nath Halder

...for the opposite party

This application under 227 of the Constitution of India is at the instance of the judgment-debtors and is directed against an order dated July 19, 2025 passed by the learned Civil Judge (Jr. Division), 1st Court at Sealdah in Title Execution Case No. 8 of 2014. By the order impugned, the application under Rule 208 of the Civil Rules and Orders, stood allowed.

Learned advocate appearing for the petitioners submits that the opposite party obtained an ex parte decree against the petitioners. The petitioners have applied under Order 9 Rule 13 of the Civil Procedure Code for setting aside the ex parte decree which ultimately stood dismissed. The petitioners preferred a miscellaneous appeal which is still pending. The learned advocate appearing for the petitioners

submits that the petitioners filed an application for stay of all further proceedings of the execution case till the disposal of the misc. appeal which stood rejected.

Mr. Halder, learned advocate appearing for the decree-holder/opposite party submits that the petitioner no. 2 filed an application under Section 151 of the Civil Procedure Code praying for setting aside the ex parte decree, which stood rejected and challenging such order the petitioner no. 2 filed a civil revision application under Section 115A of the Civil Procedure Code which also stood rejected. Thereafter, the petitioner no. 1 filed an application under Order 9 Rule 13 of the Civil Procedure Code which stood rejected and misc appeal arising therefrom is still pending. He further submits that the ex parte decree was passed on August 28, 2014 and the petitioners are deprived from enjoying the fruits of the decree till date.

Heard the learned advocates for the respective parties and perused the materials on record.

On a query of the court, the learned advocate appearing for the petitioners, in his usual fairness, submits that the order rejecting the application for stay of all further proceedings of the title execution

case during the pendency of the misc. appeal, has not been challenged by the petitioners. The petitioners have only challenged the order allowing the application under Rule 208 of the Civil Rules and Orders. Since no order of stay of the title execution case was passed by any competent court, the executing court was justified in proceeding with the hearing of the title execution case. From the bailiff report it appears that the possession of the suit property could not be delivered to the decree-holders/opposite parties as there was obstruction by the judgment-debtors. The decree-holders filed an application for police help supported by an affidavit. One of the decree-holders, namely Rajib Talukdar, deposed as PW-1 for the decree-holder. The bailiff also deposed as PW-2 and the documents including the bailiff report were marked as exhibits. The learned judge of the executing court after taking into consideration the materials on record arrived at a factual finding that the execution of the decree for recovery of possession cannot be effected without adequate police help as there is apprehension of breach of peace in the locality for the violence and obstruction by the judgment-debtors.

The learned executing court was right in allowing the application under Rule 208 of the Civil

Rules and Orders. There is no infirmity in the order impugned warranting interference under 227 of the Constitution of India.

CO 3690 of 2025 stands dismissed.

(Hiranmay Bhattacharyya, J.)