

M/L-823 & 824
11/09/2025
Ct. No.-6
Aritra

C.O. 3466 of 2024

With

C.O. 3467 of 2024

Smt. Saraswati Manna & Ors.

Vs.

Sri Debobrata Goswami & Anr.

Mr. Abhijit Ray
Mr. Santu Nandy

....for the petitioners in both matters

Mr. Indranath Mukherjee
Mr. Subir Bhattacharya

....for the opposite parties in both matters

Affidavits of service filed in Court today are taken on record.

With the consent of both the parties these two civil revision applications are taken up for hearing analogously.

CO 3466 of 2024 is at the instance of the defendants/appellants in Title Appeal No.12 of 2020, challenging an order dated August 3, 2024 passed by the Additional District Judge, 3rd Court at Alipore in Miscellaneous Case No.220 of 2022.

CO 3467 of 2024 is at the instance of the defendants/appellants in Title Appeal No.12 of 2020, challenging an order dated August 3, 2024 passed by the Additional District Judge, 3rd Court at Alipore in Miscellaneous Case No.221 of 2022.

One Sebika Goswami (since deceased) filed a suit for eviction, which was decreed by a judgment and decree

dated November 20, 2019. Being aggrieved by such judgment and decree the petitioners preferred a Title Appeal being No.12 of 2020. During the pendency of this said appeal, the sole respondent Sebika Goswami died intestate and for substituting the heir and heiress of the deceased respondent a miscellaneous case being No.220 of 2022 under Order 22 Rule 9 of the Code of Civil Procedure along with an application under Section 5 of the Limitation Act was filed. Upon the death of one of the appellants in Title Appeal No.12 of 2020 a miscellaneous case being No.221 of 2022 was filed under the provisions of Order 22 Rule 9 of the Code of Civil Procedure along with Section 5 application of the Limitation Act.

In the meantime, the decree was put into execution giving rise to Title Execution Case No.16 of 2020. The petitioner filed an application for stay of all further proceedings of Title Execution Case No.16 of 2020 on the ground of pendency of the miscellaneous cases and such prayer was rejected by the impugned orders.

Mr. Ray, learned advocate appearing for the petitioner submits that if during the pendency of the aforesaid miscellaneous cases the decree is executed and the possession is recovered, the aforesaid miscellaneous case would become infructuous. He, therefore, submits that the execution case should be stayed till the disposal of the miscellaneous cases.

Mr. Mukherjee, learned advocate appears for the opposite party. He submits that the petitioners are

enjoying the entire two storied building standing over 19.5 decimals of land. He submits that since the petitioners have suffered a decree for eviction and are enjoying the decretal property they should be directed to pay occupation charges as a condition for passing an order of stay of the execution case. Since the decree was passed sometimes in the year 2019 and the petitioners are in occupation of the entire two storied building, this Court is of the considered view that the petitioners should be directed to pay a consolidated amount on account of occupation charges as a condition for grant of stay.

There shall be an order of stay of all further proceedings in Title Execution Case No.16 of 2020 pending before the learned Civil Judge (Jr. Div.), 1st Court at Alipore till the disposal of the aforesaid miscellaneous cases subject to payment of Rs.2 lakh by two equal installments and the first of such installment shall be paid by a bank draft drawn in favour of the opposite party No.1 to be paid through the learned advocate on record of the opposite party No.1 before this Hon'ble Court on or before September 25, 2025. The balance amount shall be paid by a bank draft drawn in favour of the opposite party No.1 on or before November 6, 2025 through the learned advocate on record of the opposite party No.1 before this Hon'ble Court.

Mr. Mukherjee, learned advocate assures this Court that the learned advocate on record of the opposite

parties before this Hon'ble Court shall accept the demand drafts in terms of this order.

Since the miscellaneous cases are otherwise ready for hearing, the learned Additional District Judge, 3rd Court at Alipore is requested to make an endeavour to dispose of the Miscellaneous Case No.220 of 2022 and Miscellaneous Case No.221 of 2022 as expeditiously as possible but preferably by the end of the month of January, 2026, without granting any unnecessary adjournments to either of the parties.

With the above observations and discussions, CO 3466 of 2024 and CO 3467 of 2024 stands disposed of.

It is however, made clear that in default of payment of any of the installments, this order of stay shall automatically stand vacated without any further reference to this Court and the civil revision applications shall stand dismissed.

In view of this order, the stay applications filed by the petitioners in the aforesaid miscellaneous cases stands disposed of.

It is, however, made clear that in case the abatement of the title appeal is set aside, it will be open to the petitioner to pray for stay of execution and if such a prayer is made the opposite parties will also have liberty to raise an objection to such application and also pray for occupation charges as may be advised.

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.)