

AD-54
Ct No.16
17.01.2025
(SSS)

CO 3665 of 2024

Sri Swami Prasad Dutta
Vs.
Sri Rajesh Kumar Agarwal

Mr. Prashant Agarwal,
Mr. Badal Singh

....For the Petitioner.

1. In view of the innocuous nature of the order proposed, no prior service of notice is directed on the Opposite Party.
2. The plight of the petitioner evokes empathy in the mind of the court. The petitioner, a nonagenarian, filed an eviction suit in the year 2012, which was decreed on December 20, 2017. Thereafter, execution was levied. The defendant/Opposite Party preferred a title appeal against the said decree, having failed to succeed in which, the defendant took out a second appeal before this Court.
3. The second appeal was admitted and an interim stay was granted, however, on condition of payment of occupation charges by the defendant/Opposite Party.
4. Learned Counsel for the petitioner submits that the Opposite Party did not comply with such condition, due to which, in terms of the order of this

court, the execution was sought to be proceeded with by the petitioner. However, the woes of the petitioner started thereafter.

5. The Opposite Party/judgment debtor, by various devices, sought to stall the execution. An application under Section 47 of the Code of Civil Procedure was filed and the same was dismissed. Even thereafter, the present miscellaneous case bearing Misc. Case No. 48 of 2022, for police help to implement the eviction decree, has been kept pending since the year 2022 for no justifiable reason. The said miscellaneous case has been filed under Order XXI Rule 97 of the Code of Civil Procedure read with Rule 208 of the Civil Rules and Orders framed by this Court for implementation of the decree in connection with the execution case.

6. At this juncture, on the query of this court, learned Counsel for the petitioner submits that Miscellaneous Case No. 64 of 2024 is also pending under Order XXI Rules 99 to 101 of the Code of Civil Procedure at the behest of a third party/judgment debtor, who the petitioner claims to be the sister of the judgment debtor/Opposite Party and has been set up by the judgment debtor.

7. Be that as it may, the established law is that unless a challenge under Order XXI Rules 99 and/or

101 of the Code are disposed of, the connected execution case cannot be proceeded with.

8. Accordingly, CO 3665 of 2024 is disposed of by requesting the learned Civil Judge (Senior Division), Second Court at Barasat, District – North 24 Parganas to dispose of Miscellaneous Case No. 64 of 2024 pending before it, along with any other interlocutory applications which may be pending in connection with Title Execution Case No. 12 of 2018, as expeditiously as possible. It is expected that Miscellaneous Case No. 64 of 2024 and other connected applications, if any, shall positively be disposed of within two months from the date of communication of this order to the executing court.

9. Immediately thereafter, the executing court shall proceed with and dispose of Miscellaneous Case No. 48 of 2022 filed by the present petitioner, preferably within a fortnight thereafter.

10. There will be no order as to costs.

11. The parties and all concerned shall act on the server copy of this order, without insisting upon prior production of any certified copy, for the purpose of compliance.

(Sabyasachi Bhattacharyya, J.)