

17.11.2025
Ct. No. 06
Sl. No.34
Cp

C.O. No. 3917 of 2025

Sri Samir Kumar Chakraborty
Vs.
Sri Sekhar Kumar Chakraborty

Mr. Kushal Chatterjee
Mr. Debrup Choudhury
.....for the petitioner.

Mr. Kaushik Banerjee
Ms. R. Sen
Ms. Sarbani Ghosal
.....for the opposite party.

By the order impugned, the learned executing court refused to stay the Execution Case No. 27 of 2024, arising out of Title Suit No.1117 of 2018.

Mr. Chatterjee, learned advocate appearing for the petitioner, submits that the learned executing court did not take into consideration the provisions of Order 21 Rule 26 of the Code of Civil Procedure. The Code allows the executing court to stay the proceeding for a limited period, to enable the judgment debtor to obtain an appropriate order either from the appellate court or from the court which passed the decree. The learned executing court, although, gave reasons which are not very tenable in law, he is right to the extent that unless a superior court or a competent court stays the proceeding, the execution should proceed.

In the decision of ***Periyammal (Dead) vs. V. Rajamani and Another (2025) 9 SCC 568*** the Hon'ble Apex Court held as follows:-

“74. The mandatory direction contained in Para 42.12 of Rahul S. Shah (supra) requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors., Special Leave Petition(C) Nos. 19654 of 2022.

75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.”

It appears that the suit was decreed ex parte and an application under Order 9 Rule 13 of the Code of Civil Procedure was filed by the petitioner. The said application was belated and, as such, an application for condonation of delay was filed. The said application for condonation of delay is ready for hearing as the written objection has also been filed. The same is fixed for hearing on December 20, 2025.

The petitioner is at liberty to pray for preponement of the date of hearing of the said application upon notice to the opposite party and the learned court shall dispose of the said application within two days from the next date that shall be fixed. If the delay is condoned, in that event, the application for stay shall be taken up at least on the point of grant of interim stay as it is submitted that the execution is proceeding at great speed.

In the event the delay is condoned, it is made clear that the issue of grant of interim stay shall be decided upon contested hearing, prior to January 17, 2026.

The revisional application is accordingly disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)