

Item No. 25
24.11.2025
Court. No. 6
GB

C.O. 4011 of 2025

Sri Swapan Das
Vs.
Ankit Agarwal & Ors.

*Mr. Tapas Mukherjee,
Mr. Amitava Chatterjee*

...for the Petitioner.

Ms. Amrita Pandey

...for the Opposite Parties.

1. The petitioner is aggrieved by an order dated September 9, 2025, passed by the learned Civil Judge (Junior Division), 2nd Court at Howrah in Title Execution Case No.03 of 2025 arising out of Title Suit No.102 of 2011.
2. In the order impugned, the court directed that the execution of the decree had already been directed to be effected on May 22, 2025. Such order was passed in Title Execution Case No.4 of 2025. The facts of the case were similar to those in Title Execution Case No. 4 of 2025. The writ was returned by the Nazir with a report that the sale could not be executed due to obstruction. The Sheristadar submitted a report that no order of stay had been granted. The decree-holder filed a petition praying for issuing a writ, supported by an affidavit, inter alia, stating that no title appeal had been preferred from the judgment dated January 13, 2023. The learned court was of the view that, as there was no stay of the execution from any higher forum, the execution case should continue. Accordingly,

execution through police help was directed and fresh writ was directed to be issued. The Seal Bailiff was directed to execute the writ by breaking open the lock of the door of the decretal property.

3. Mr. Mukherjee, learned advocate for the petitioner submits that the suit was decreed ex parte. Only when the order in the execution case was passed, the petitioner came to know about the ex parte decree and filed an application under Order 9 Rule 13 of the Code of Civil Procedure.
4. I find that the application was filed sometime in August, 2025 and the suit was decreed on January 13, 2023. There does not appear to be an application for condonation of delay in filing the Order 9 Rule 13 of CPC. No prayer for such condonation has been made.
5. It is submitted that an application for stay has been filed in connection with the said misc. case, but there is no order of stay as yet.
6. I find from the records that, the application under Order 9 Rule 13 of the Code of Civil Procedure has not even been admitted. The petitioner also did not approach the learned executing court, seeking stay of the execution, to enable him to pursue his remedy before the court by seeking setting aside of the ex parte decree. Mere filing of the applications under Order 9 Rule 13 of the CPC, along with an application for stay cannot be a ground for stay of the execution case.

7. Under such circumstances, the learned executing court had no other option, but to proceed with the execution. The order impugned is not interfered with. Clearly, in this case, the executing court did not have any reason for not proceeding with the execution. The decisions of the Hon'ble Apex Court are relied upon to substantiate that execution should be completed expeditiously.
8. In the decision of ***Rahul S. Shah v. Jinendra Kumar Gandhi***, reported in **(2021) 6 SCC 418**, the Hon'ble Apex Court held as follows:-

“**42.** All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

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42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.

43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite

the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.”

9. In the decision of ***Periyammal (Dead) Through LRS and Ors.*** reported in ***2025 INSC 329***, 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.”

10. In the decision of ***Bhoj Education and Welfare Society and Ors. vs Goyal Education and Welfare Society & Ors.*** decided in ***Special Leave to Appeal No. 19654 of 2022***, the Hon’ble Apex Court held as follows:-

“The complaint of the petitioner is that the Execution Court is not abiding by the directions issued by this Court in the decision in *Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.*, reported in (2021) 6 SCC 418. In the said decision, this Court held as follows:-

“42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions :-

2. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.”

This means that it becomes the duty of the Execution Court to dispose of the execution proceedings at the earliest and since this Court has directed that the Execution Court must dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay, this direction is meant to be observed. This would mean that every effort should be made to dispose of the execution petition within the said time limit and the Execution Court should have reasons for not being able to dispose of the execution petition. The Execution Court is duty bound to record reasons in writing when it is unable to dispose of the matter.”

11. Accordingly, the application is disposed of.
12. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)