

S/L 2
16.04.2025
Court No.17
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 4437 of 2024
[Assigned]

Sourav Dutta
Vs.

Sri Sravan Shaw & Ors.

Mr. Sounak Bhattacharyya
Mr. Sounak Mondal
Mr. Anirban Saha Ray
Mr. Abhirup Haldar

...for the Petitioner.

The defendant in a suit for eviction of trespassers is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against the Order No.191 dated November 7, 2024 passed by the 2nd Court of learned Civil Judge (Junior Division), Alipore, District: 24-Parganas (South) in Miscellaneous Case No.10 of 2020.

The decree of eviction dated September 23, 2011 passed in Title Suit No.888 of 2008 which was affirmed in second appeal, was put into execution, giving rise to Execution Case No.02 of 2012.

In the said execution case, the petitioner had filed an application under Section 47 of the Code of Civil Procedure registered as Misc. Case No.26 of 2016. The said misc. case was dismissed for default on January 17, 2018.

The petitioner, for restoration of the said misc. case, took out an application. The Executing Court by the order dated August 30, 2018 had allowed the said application with costs of Rs.1,000/-, however, on the failure of the petitioner to pay the said costs, by the order dated January 10, 2020, the Executing Court had recalled the said order dated August 30, 2018, consequently had dismissed the said Misc. case No.26 of 2016.

The petitioner thereafter had filed an application under Order IX Rule 4 of the Code of Civil Procedure for restoration of the said Misc. Case. The said application was registered as Misc. Case No.10 of 2020.

The Executing Court by the order impugned has dismissed the said application holding, *inter alia*, that there is nothing on record to suggest that the petitioner had ever made any endeavour to pay the said costs.

The order dated August 30, 2018 dismissing the Misc. case No.26 of 2016 has attained finality; as such the subsequent application under Order IX Rule 4 of the Code of Civil Procedure for restoration of the said Misc. case by recalling the order dated January 17, 2018 is not maintainable, besides, the petitioner, has failed to produce any evidence to demonstrate that he had ever attempted to comply with the condition of payment of costs for recalling of the order dated January 17, 2018, the order impugned, therefore, does not call for any interference.

CO 4437 of 2024 is dismissed without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)