

16.07.2025
Court No. 06
Item 175 (ML)
Cp

C.O. 4465 of 2024

Jobed Ali Khan
Vs.
Jaherun Bibi & Ors.

Mr. Amit Baran Dash
Ms. Ankana Sarkar

.....for the petitioner.

This application under Article 227 of the Constitution of India is at the instance of the decree holder and is directed against the order dated November 22, 2024, passed by the learned Civil Judge (Junior Division), 2nd Additional Court, Contai in J. Misc. Case No. 28 of 2024.

Learned advocate for the petitioner submits that the execution case could not have been stayed in exercise of powers under Section 10 of the Code of Civil Procedure. Petitioner filed a suit for eviction of trespasser, recovery of possession and for mandatory injunction being Title Suit No. 131 of 2015. The said suit was decreed by judgment and decree dated December 16, 2023, thereby directing the defendants to remove the unauthorized and illegal structures from the 'ka' schedule property at their own cost and vacate the 'ka' schedule property within 60 days from the date of the order. The said decree was put

into execution giving rise to Title Execution Case No.6 of 2024. The opposite party nos. 1 to 19 filed an application under Order 21 Rule 99 of the Code of Civil Procedure which was registered as J. Misc. Case No.28 of 2024.

The learned Judge of the executing court passed an order of stay of all further proceedings of the execution case by the impugned order. The learned Executing Court after considering the materials on record returned a finding that it prima facie appears that the petitioner has ownership and possession in respect of the property in question.

It is well settled that an application filed by a third party under Order 21 Rule 99 has to be adjudicated. If during the pendency of the said Misc. Case, the decree is executed, petitioner will suffer irreparable loss and injury.

The learned Judge of the executing court was right in staying the further proceedings of the execution case during the pendency of the miscellaneous case filed under the provisions of Order 21 of the Code of Civil Procedure.

For the reasons as aforesaid, this Court is not inclined to interfere with the impugned order.

At this stage, learned advocate for the petitioner prays that a direction be passed upon the

learned Judge of the Executing Court to dispose of the J. Misc. Case expeditiously.

In the light of the submissions made by the learned advocate for the petitioner C.O. 4465 of 2024 stands disposed of by requesting the learned Civil Judge (Junior Division), 2nd Additional Court, Contai to dispose of the J. Misc. Case No. 28 of 2024 as expeditiously as possible, without granting any unnecessary adjournments to either of the parties.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date, upon compliance of usual formalities.

(HIRANMAY BHATTACHARYYA, J.)