

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Present:
The Hon'ble Justice Debangsu Basak**

CO 176 of 2025

**Sri Madanlal Agarwal @ Madanlal Gupta & Ors.
Vs.
Sri Ajay Kumar Bhattacharya**

For the Petitioners :Mr. Bapi Sarkar, Advocate
Mr. Roumyadip Saha, Advocate

Heard & Judgment on : November 17, 2025

DEBANGSU BASAK, J.:-

1. None appears for the opposite party despite service.
2. Affidavit of service filed in Court be taken on record.
3. Revisional application is directed against Order No.49 dated August 26, 2025.
4. Revisional application is at the behest of the judgment debtors.
5. By the impugned order, an application of the judgment debtors, in effect, under Order 21 Rule 29 of the Code of Civil Procedure, 1908, was dismissed by the Executing Court, upon returning a finding it was stated to be under Order 21 Rule 26 of the Code of Civil Procedure, 1908.

6. Learned Advocate appearing for the petitioners submits that, the petitioners complied with the order dated September 11, 2025 passed by the Executing Court and deposited the amount directed.
7. Learned Advocate appearing for the petitioners submits that, the learned Executing Court acted with material irregularity in not converting the application filed under Order 21 Rule 26 of the Code of Civil Procedure, 1908 into one under Order 21 Rule 29 of the Code of Civil Procedure, 1908. Consequently, he submits that, the impugned order should be set aside.
8. Learned Advocate appearing for the judgment debtors relies upon **(2019) 9 Supreme Court Cases 533 (Pruthvirajsinh Nodhubha Jadeja (Dead) By Legal Representatives vs. Jayeshkumar Chhakaddas Shah and Others)** for the proposition that mere non-mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the Court.
9. None appears for the opposite party.
10. Judgment debtors suffered a decree for eviction.
11. Execution proceedings is pending in excess of six months. In **(2025) 9 Supreme Court Cases 568 (Periyammal (Dead) Through Legal Representatives and Others vs. V. Rajamani and Another)**, Hon'ble Supreme Court required every Executing Court to dispose of an execution proceeding within six months from the date of its institution.

12. The judgment debtors suffered an ex parte decree of eviction. Application for recalling of the ex parte decree is pending consideration. In the execution proceedings, the judgment debtors applied for stay of execution under Order 21 Rule 26 of the Code of Civil Procedure, 1908.
13. Learned Executing Court found that, there is a provision under Order 21 Rule 29 which could be invoked in the facts scenario.
14. Nothing is placed before Court to suggest that, the petitioners before Court cannot apply under Order 21 Rule 29 of the Code of Civil Procedure, 1908.
15. ***Pruthvirajsinh Nodhubha Jadeja (Dead) By Legal Representatives*** (*supra*) is of the view that, mere non-mentioning of an incorrect provision is not fatal to an application if the power to pass such an order is available with the Court.
16. The judgment debtors can approach the Executing Court for appropriate relief. Seeking such relief is not precluded by the order impugned. Moreover, the directions contained in ***Periyammal (Dead) Through Legal Representatives and Others*** (*supra*) also needs to be taken into consideration.
17. In view of ***Periyammal (Dead) Through Legal Representatives and Others*** (*supra*), keeping the revisional application pending will not subserve the interest of justice.
18. In such circumstances, the revisional application is disposed of by permitting the applicant to apply before the Executing Court for reliefs.

The Executing Court will no doubt consider such application in accordance with law, taking the directions contained in ***Periyammal (Dead) Through Legal Representatives and Others*** (*supra*) in consideration. The deposit already made shall abide by the result of the Executing proceeding.

19. **CO 176 of 2025** is **disposed of** accordingly.

(Debangsu Basak, J.)

(AD)