

S/L 6
03.01.2025
Court. No. 3
Sourav

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

CO 233 of 2024

**Shri Bimal Chandra Modak @
Lal babu @ Bimal Modak & Ors.
Vs.
Shri Purna Chandra Modak**

*Mr. Arijit Ghosh
Ms. Angana Rakshit*

...for the petitioners.

1. In this revisional application as filed under Article 227 of the Constitution of India, the judgment and order dated 16.10.2023 as passed by the learned Additional District Judge, Alipurduar in Misc. Appeal No. 10 of 2022 is impugned.
2. By the impugned judgment and order, the learned First Appellate Court has been pleased to dismiss the said appeal upholding the order dated 13.06.2022 as passed by the learned Civil Judge (Senior Division), Alipurduar in Title Execution Case No. 6 of 2015 whereby and whereunder the said executing court had refused to grant any stay of execution as prayed for by the judgment debtor.
3. On perusal of the entire materials as placed before this Court and after hearing the learned advocate for the revisionists/judgment debtors, it appears to this Court that though the First Appellate Court has duly recorded the submission of the learned advocate for the respondent/decreed holder therein that the impugned order before the First Appellate Court is not appealable since the same does not fall within

the purview of the Order 43 of the Code of Civil Procedure read with Section 104 CPC but the First Appellate Court has not returned any finding with regard to such submission as made by the learned advocate for the decree holder/respondent therein.

4. On further perusal of the entire materials as placed before this Court, it reveals that on 13.06.2022, the learned Civil Judge (Senior Division), Alipurduar in Title Execution Case No. 6 of 2015 has been pleased to reject a petition for stay of the execution. Admittedly, such order is not an appealable order and, therefore, the First Appellate Court ought not to have entertained the said appeal being Misc. Appeal No. 10 of 2022 though an argument to that effect was advanced on behalf of the respondent/decreed holder in the said appeal. It appears to this Court that the learned First Appellate Court has failed to visualize the appropriate provision of law and proceeded to dispose of the Misc. Appeal No. 10 of 2022 on merit and ultimately, dismissed the said Misc. Appeal No. 10 of 2022 on contest.
5. Although, the finding of the First Appellate Court is in favour of the decree holder, however, this Court considers that the impugned judgment and order dated 16.10.2023 is required to be modified to the extent that the Misc. Appeal No. 10 of 2022 is not maintainable since no appeal lies challenging an

order of rejection for grant of stay in an execution proceeding.

6. With the aforementioned observations, the instant revisional application being **CO 233 of 2024** is dismissed.
7. There shall, however, be no order as to costs.
8. Department is directed to communicate this order both to the executing Court as well as the First Appellate Court for their record.

(Partha Sarathi Sen, J.)