

09.06.26
ML-1343
&
S/L
Sl-01
Ct. 06
(Samar)

**CO 550 of 2026
with
CO. 1796 of 2026**

**Smt. Hasikana Polley alias Hasina Polley & Anr.
V.
Sri Kalu Koley & Ors.**

Mr. Animesh Paul,
... for the petitioner.
Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray,
....for the opposite parties.

1. Since both the revisional applications being CO 550 of 2026 and CO 1796 of 2026 have been filed against orders passed in the same execution case being Title Execution Case No. 106 of 2025 arising out of Title Suit No. 116 of 2008, therefore the same are being taken up together and are being disposed of by a common order.
2. CO 550 of 2026 has been preferred against orders dated September 22, 2025, December 16, 2025, January 13, 2026 and January 21, 2026 passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah being in-charge of the learned Civil Judge (Junior Division), 5th Court at Howrah in Title Execution No. 106 of 2025 arising out of Title Suit No. 116 of 2008.
3. C.O. 1796 of 2026 is directed against an order dated May 19, 2026 passed by the learned Civil Judge (Junior Division), 5th Court at Howrah in Title Execution Case No. 106 of 2025 whereby the

petitioner's application for dismissal of the execution case has been rejected and the execution case has been allowed by directing the bailiff to execute the decree with the help of police by permanently restraining the judgment debtors "*from obstructing the Dhr from fencing the suit property as per schedule of the decree, on 09.06.2026 at 14:00 hours*".

4. The opposite party nos. 1 and 2 had instituted Title Suit No. 116 of 2008 before the learned Civil Judge (Junior Division), 5th Court at Howrah praying *inter alia* for a decree of declaration and permanent injunction.
5. Such suit was decreed on December 23, 2022 thereby declaring that the plaintiffs/opposite party nos. 1 and 2 have every right to enjoy the suit property peacefully, uninterruptedly with all rights, title and interest and further declaration that the defendants (i.e. the petitioners and the pro-forma opposite party no. 3) have no right to disturb the peaceful possession and enjoyment of the plaintiffs over the suit property and to obstruct the plaintiffs from fencing the suit property.
6. The petitioner carried such decree in appeal being Title Appeal No. 24 of 2023. The appeal was dismissed on October 08, 2024 thereby affirming the judgment and decree dated December 23, 2022 passed in Title Suit No. 116 of 2008. This Court is

informed that a second appeal being SAT No. 65 of 2025 has been preferred before this Court against the said appellate decree dated October 08, 2024, which is pending.

7. The opposite party nos. 1 and 2, have put the decree into execution by filing Title Execution Case no. 106 of 2025. In the said execution case, an order was passed by the learned Executing Court thereby issuing a writ of eviction and delivery of possession. The bailiff could not execute the writ due to resistance put up by the judgment debtors and accordingly filed a report before the learned Executing Court.
8. The opposite party nos. 1 and 2 thereafter filed an application under Rule 208 of the Civil Rules and Orders and prayed for police assistance for execution of the decree, which was allowed by the learned Executing Court by an order dated February 21, 2026.
9. The petitioners have challenged all the orders right from registration of the execution case till the passing of order for police help by filing C.O. 550 of 2026.
10. Subsequently, the petitioners filed an application before the learned Executing Court praying for dismissal of the execution case.
11. It is pertinent to note that the only ground urged in the application praying for dismissal of the

execution case is that the application for execution does not contain the ingredients of Order 21 Rule 32 of the Code.

12. The petitioners' application for dismissal of the execution case was taken up by the learned Executing Court on May 19, 2026 and the same has been rejected by the order impugned. By the same order, the bailiff has been directed to execute the decree with the help of police by *"permanently restraining the Jdrs. from obstructing the Dhr from fencing the suit property as per the schedule of the decree, on 09.06.2026 at 14:00 hours and submit a report regarding the same, by the date fixed."*

13. Feeling aggrieved by the said order, the petitioners have approached this Court by way of the second revisional application being C.O. 1796 of 2026.

14. Mr. Paul, learned advocate appearing for the petitioners submits that the execution application filed by the opposite parties does not indicate the mode by which the decree is sought to be executed as required under Order 21 Rule 11(2)(j) of the Code of Civil Procedure, 1908. He invites the attention of this Court to the provisions of Order 21 Rule 32 of the Code and submits that no case has been made out to show that the petitioners have disobeyed the decree and in such view of the matter, the learned Trial Court could not have passed the aforesaid

order.

15. Mr. Paul, further submits that since the decree itself was one for declaration and permanent injunction, a writ for eviction and delivery of possession could not have been issued by the learned Executing Court. It is further submitted that the bailiff's report was in connection with resistance offered to eviction of the petitioners and that being so an order for police help could not have been passed on that basis.

16. It is further contended by Mr. Paul that it was incumbent on the decree holder to demonstrate before the Court that the judgment debtors had disobeyed the decree. In support of his contention that upon a decree being disobeyed the only recourse available to the decree holder is to file an application for execution under Order 21 Rule 32 of the Code, he relies on a judgment of the Hon'ble Supreme Court in the case of **Kanwar Singh Saini Vs. High Court Delhi** reported at **(2012) 4 SCC 307**.

17. Mr. Mahato, learned advocate appearing for the opposite parties (decree holders) submits that although the opposite parties-decree holders have not indicated the mode in which the decree is to be executed, yet, the relief sought for in the application for execution has been clearly indicated by the opposite parties. He submits that the decree holders

had prayed for relief in terms of the decree granted by the learned Trial Court in their favour which included fencing of the suit property free of obstruction from the defendants.

18. Mr. Mahato further submits that the decree passed in the suit clearly holds that the decree holders are in possession of the suit property, therefore there could be no question of recovery of possession. It is submitted that the decree holders only seek execution as regards fencing of the property and the order dated May 19, 2026 has only granted that.

19. It is further submitted that the petitioners have lost upto the first appellate stage and the second appeal filed before this Court in March 2025 has not even been moved for the last more than one year.

20. Heard learned advocates appearing for the respective parties and considered the material on record.

21. It is true, that the execution application filed by the opposite parties (decree holders) has not been properly drafted however, a meaningful reading of the relief prayed for in the said application would reveal that the opposite parties have prayed for execution of the decree which contains a direction for permanent injunction restraining the defendants from causing any

obstruction in fencing of the suit property.

22. There is however enough substance in the submission of Mr. Paul that the learned Executing Court could not have issued a writ for eviction and delivery of possession when there was no decree of that effect. Such order is clearly without jurisdiction and would have persuaded this Court to interfere with it.

23. However, in view of the subsequent application filed by the decree holders, that details the factual position while praying for police help and the order dated May 19, 2026 (impugned in C.O. 1796 of 2026) by reason whereof the earlier order dated December 16, 2025 and the subsequent order dated February 21, 2026 lose relevance, interference is not required as the said earlier orders do not cause any prejudice to the petitioners in the facts of the present case.

24. The decree holders' application for police help clearly indicates that the relief sought for in execution was limited to fencing of the decreetal property and that the petitioners and their men *"laid down on the ground in front of the labourers of the decree holders thereby physically preventing them to proceed with the fencing work."* Such application makes up the defect that was there in the execution application.

25. The direction passed by the learned

Executing Court on May 19, 2026 that has been challenged in the second revisional application, clearly directs the bailiff to execute the decree with the help of the police only to the extent of restraining the judgment debtors from obstructing the decree holders in fencing the suit property as per the schedule of the decree.

26. In any case, if the petitioners are not obstructing the fencing work or they do not intend to obstruct the fencing work then they cannot be aggrieved by the order. The order being wholly in terms of the decree cannot be said to be unjustified.

27. The judgment of the Hon'ble Supreme Court in the case of **Kanwar Singh Saini** (supra) cannot aid the petitioners in the facts of the present case. In the said case the decree holder instead of getting the decree executed by filing an application for execution had filed an application under Order 39 Rule 2A of the Code. No application for execution had been filed at all. In the case at hand there is an application for execution which according to the petitioners is defective, as it does not contain the mode of execution of the decree and it does not state that the decree has been disobeyed. As already indicated hereinabove, the subsequent application filed by the decree holders clearly indicates that the petitioners have disobeyed the decree there is a prayer for getting the decree

executed through help of police.

28. Although the learned Executing Court has in the order dated May 19, 2026 observed that the provisions of Order 21 Rule 32 are not directly applicable to the case yet that by itself would not vitiate the order since the ultimate conclusion reached by the learned Trial Court appears to be justified in the facts of the present case and the execution application read with the subsequent application filed by the decree holders fulfills the requirement of Order 21 Rule 32 of the Code.

29. It needs to be recounted that a suit of 2008 was ultimately decreed in the year 2023 and it has withstood an appellate challenge in the year 2024, whereafter the decree has been put execution. There is no order of stay on the execution. This Court also notes that the petitioners have not asserted even a semblance right by dint whereof they could be said to be entitled to resist the decree. The objection is based only on the procedural framework and technicalities. The two revisional applications as well as the application seeking dismissal of the execution case attack the execution proceedings only on the grounds of the execution application being defective and the earlier orders of the learned Executing Court being beyond the decree.

30. Having regard to the facts of the present case

in totality where the petitioners (judgment debtors) are seen to resist execution of a lawful decree only on technical grounds and not on the basis of any assertion of right; where the earlier flawed writ issued by the order dated December 16, 2025 remained unexecuted causing no harm to the petitioners and where the subsequent order dated May 19, 2026 is in absolute consonance with the decree, this Court is not inclined to interfere at this stage.

31. The whole object of an execution proceeding is to ensure that the fruits of a decree reach the decree holder in accordance with law. The ultimate order dated May 19, 2026 directing execution does exactly that and there is nothing demonstrated to cause prejudice to the petitioners.

32. The order dated May 19, 2026 cannot be viewed as a mere consequential order. The Court has passed such order in absolute conformity with the decree and has not continued with the earlier flawed order of writ issuance.

33. In exercise of jurisdiction under Article 227 this Court cannot allow the judgment debtors to sail on pure technicalities at the cost of substantive justice and defeat a decree, more so when they have not even feebly asserted any right to resist. In any case since the execution case is still pending, the Court has not lost jurisdiction and the order dated

May 19, 2026 cannot be said to be suffering from any jurisdictional error.

34. With the above observations, CO. 1796 of 2026 and CO. 550 of 2026 stand dismissed. There shall be no order as to costs.

35. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)