

19.06.2026

Sl. No.: 16

Court No.6

BM

C.O. 651 of 2026

SANJA BIBI AND ANR.

VS

AMIR ALI MAL

Mr. Susenjit Banik

Mr. Sayan Mistri

... for the petitioners

Mr. Partha Pratim Roy

Ms. Poulami Chakraborty

... for the opposite party

1. This revisional application is directed against an order dated January 17, 2026 passed by the learned Civil Judge(Junior Division) Bidhannagar in Misc. Case No.16 of 2021 arising out of Title Execution Case No.12 of 2009.

2. The opposite party had instituted Title Suit No.213 of 2003 against the predecessor-in-interest of the petitioner praying for, inter alia, for decree of declaration and mandatory injunction. In the said suit the petitioner filed a counter claim. The suit was dismissed but the counter claim filed by the petitioner in the said suit was decreed. The petitioner has put the said decree into execution by initiating Title Execution Case No.12 of 2009.

3. In the said execution case, the opposite party has filed an application under Order 21 Rule 97 to 101 read with Section 47 and Section 151 of the Code of Civil Procedure, 1908 which has been registered as

Misc. Case No.16 of 2021. Along with the said application the authorised representative of the opposite party also filed an application under Order 32 Rule 1 of the Code praying for leave to represent the opposite party as the next friend of the opposite party.

4. The opposite party then filed an application under Order 26 Rule 9 of the Code which has been allowed by the order dated January 17, 2026.

5. Feeling aggrieved thereby the petitioner has approached this Court by filing the present revisional application.

6. Learned Advocate appearing for the petitioners submits that Misc. Case itself is not maintainable inasmuch as the said Misc. Case could be proceeded with by the next friend of the opposite party only on the strength of an application under Order 32 Rule 1.

7. Drawing the attention of this Court to the order dated July 28, 2024 passed by the learned Trial Court, it is submitted that since all the interlocutory applications which include the application under Order 32 Rule 1 were withdrawn therefore the said application under Order 32 Rule 1 of the Code also stood withdrawn and there is therefore no leave to continue with the Misc. Case. It is submitted that the Misc. Case could not be allowed to be continued.

8. It is further submitted that earlier also the opposite party had filed an application under Order 26

Rule 9 of the Code which was withdrawn by the same order dated July 20, 2024. However, the subsequent application under the same provision has been allowed by the learned Trial Court without allowing any opportunity to the petitioner to contest the same by filing written objection.

9. It is further submitted that the petitioner had filed the written objection against the application for local investigation filed earlier and the learned Trial Court has treated the filing of the said written objection as if same has been filed in respect of the subsequent application for local inspection.

10. Mr. Roy, learned advocate appearing for the opposite party submits that the question as to whether the Misc. Case is maintainable or not was never raised before the learned Executing Court.

11. It is submitted by Mr. Roy that withdrawal of the application under Order 32 Rule 1 by the opposite party would not be fatal to the opposite party's Misc. Case inasmuch as the cause title of the application under Order 21 Rule 97 to 100 of the Code clearly describes the status of the opposite party and his relation with the authorised representative.

12. It is further submitted that second application for local investigation is based on subsequent facts and not on the same facts which first application that was withdrawn was founded.

13. Heard learned advocate appearing for the respective parties and considered the material on record.

14. As regards the petitioners' contention touching upon the maintainability of the Misc. Case on the ground of withdrawal of the application under Order 32 Rule 1 of the Code, this Court finds substance in the submission of Mr. Roy that if the relation of the litigant with the authorised person or the next friend is indicated in the cause title of the relevant petition/pliant/pleadings, the same would suffice. If any question is to be raised, it is for the defendant or the respondent, as the case may be, to raise the same by way of appropriate application under Order 32 Rule 2 of the Code. If the petitioners indeed feel that the maintainability of the Misc. Case ought to be questioned it will be open to the petitioners to take appropriate steps

15. As regards petitioners' contention that the petitioner was not granted any opportunity to contest the application for local investigation, the said point must be raised before the learned Trial Court in the first instance inasmuch as the order specifically records that a written objection has been filed by the petitioner. It is well settled that there is a presumption that recordings of proceedings in orders of Court are correct.

16. However, since the orders passed subsequent to the date filing of the application under Order 26 Rule 9

of the Code do not record that any written objection thereto had been filed therefore the submission made by the learned advocate appearing for the petitioners cannot be brushed aside but in any case such aspect must be considered by the learned Trial Court itself.

17. In such view of the matter, the petitioners shall have liberty to approach the learned Executing Court by way of an appropriate application seeking appropriate orders within a month from date.

18. Since there is a doubt whether the petitioners had sufficient opportunity to file written objection to the application under Order 26 Rule 9 or not, the order dated January 17, 2026 passed by the learned Executing Court shall be kept in abeyance till the petitioners' application seeking appropriate orders is disposed of by the learned Trial Court.

19. The petitioners' application shall be considered by the learned Trial Court and if it is found that the petitioner was not granted opportunity to file written objection, the petitioner will be granted liberty to file written objection and shall be heard.

20. C.O.651 of 2026 stands disposed of. No costs.

(Om Narayan Rai, J.)