

30.01.2026
Court No. 07
Item No.293
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 653 of 2025

**Reverine Dredging (India) Ltd.,
represented by its Director,
Janab Abul Hossain
-Versus-**

Sri Atish Ghosh & Ors.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das

.....for the petitioner

Mr. Supriyo Ghosh

....for the O.P. Nos. 1 & 2

- 1) Affidavit of service filed on behalf of the petitioner is taken on record.
- 2) The petitioner is aggrieved by an order dated December 20, 2024 passed by the learned Civil Judge, (Senior Division), 4th Court at Alipore, District – 24 Parganas (South), in Misc. Case No. 188 of 2024. The Misc. case was filed in connection with Title Execution Case No. 36 of 2024. The execution case arose out of a judgement and decree in Title Suit No. 1366 of 2018. The petitioner was not a party to the suit and the judgment debtors suffered a decree of eviction. The opposite party nos. 1 and 2, are the decree-holders, who succeeded in Title Suit No. 1366 of 2018.
- 3) The petitioner claims to have acquired the property on lease from the erstwhile owner that is the trust. It is the specific case of the petitioner that the opposite party nos. 1 and 2

had also come in possession of the property by way of a lease deed executed by the same trust.

4) It is contended by Mr. Mukherjee that the lease executed between the trust and the opposite party nos. 1 and 2 expired and the petitioner was inducted as lessee by execution of another lease deed at a later date. Thus, Mr. Mukherjee submits that the provisions of the Code of Civil Procedure i.e. Order 21 Rules 97 to 101 were availed of by the petitioners who were in rightful possession of the property in question. The decree in no way would be binding upon the petitioner. By virtue of the said decree, the decree-holders could not evict the petitioners who had come in possession of the property on the basis of a lease deed executed by the trust, which was separate and distinct from the relationship between the trust and the decree-holders.

5) Learned advocate for the decree-holders further submits that during the subsistence of the lease executed by the trust in favour of the decree-holders, the alleged deed of lease was executed with the petitioner. A suit for cancellation of the lease executed in favour of the decree holder had been filed by the trust. During the pendency of such a suit, the application filed by the petitioner could not be entertained by the learned executing Court.

6) Learned advocate for the decree-holders submits that the petitioner does not have any right and interest in the decretal property. A suit with regard to the lease granted by the trust in favour of the decree-holders is pending. The fate of the said lease granted to the decree-holders by the trust is yet to be decided. Under

such circumstances, there can be no occasion for the petitioner to resist the decree.

7) Having considered the rival contentions of the parties and the order impugned, this Court finds that the learned Court proceeded on the basis that only a judgment-debtor could pray for stay of execution and not a third party. In my view, if the decree is executed then Misc. Case No. 188 of 2024 will become infructuous. Here the petitioner has resisted the decree by invoking the provisions of Order XXI Rules 97 to 101 of the Code. The said application has been registered as Misc. Case No. 188 of 2024. The said Misc. case is pending adjudication. The Misc. case has to be adjudicated on the basis of the evidence. In the midst of such proceeding, if the decree-holders are put in possession, then, the petitioner, who claims to be in possession will stand evicted. The situation will become irreversible. The Court should have protected the decree-holders by compensating them in some way and decided the Misc. Case No. 188 of 2024 expeditiously. The decree-holders are armed with a decree of eviction. In view of the pendency of the Misc. Case No. 188 of 2024 they are not able to utilize the property. They are entitled to occupational charges.

8) Mr. Mukherjee submits that the petitioner is already paying rent to the superior landlord and as such the company cannot be saddled with further occupational charges. However this Court of the view that rightly or wrongly the decree-holders are armed with a decree, They are entitled to enjoy the fruits of the decree. Thus, as a one time measure, a sum of

Rs. 2 lakhs shall be deposited by the petitioner before the learned executing Court within three weeks and the learned executing Court shall invest the same in a short term interest bearing auto renewable fixed deposit with a nationalized bank. This amount will be deposited towards occupational charges.

9) The learned Court shall dispose of the Misc. Case No. 188 of 2024 within a period of two months from the date of communication of this order.

10) The decree-holders shall be at liberty to pray for withdrawal of the money. The deposit of occupational charges will be subject to the result of the suit.

11) Accordingly, the revisional application is disposed of without any order as to costs.

12) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)