

01.04.2026
Sl. No. 19
Ct No. 6
SG

C.O. 1059 of 2026

**Atanu Banerjee & Ors.
Vs**

Sri Lalta Prosad Jaiswal @ Lalta Prasad Jaiswal

Mr. A.K. Saha,
Mr. S. Banerjee,
Mr. S. Sinha.

...for the petitioner

Mr. Sanjit Singh,
Ms. Sulagna Sen,
Mr. Salil Kumar.

..for the opposite party

1. This revisional application is directed against an order dated February 24, 2026 passed by the learned Civil Judge (Junior Division), Additional Court, Sealdah in Title Execution Case No. 6 of 2025 whereby the said Title Execution case has been dismissed upon holding the same to be time barred.

2. The petitioner had filed a suit being title Suit No. 42 of 2001 for eviction of the opposite party-a tenant, inter alia on the ground of reasonable requirement. The said suit was decreed on February 26, 2004. The decree was carried in appeal being Title Appeal No. 20 of 2006. During pendency of the appeal, the petitioner put the decree into execution.

3. The first appellate court reversed the decree by a judgement and decree dated September 13, 2017. Such reversal was assailed by the petitioner in second appeal before this Court by filing SA 172 of 2018. The said second appeal was ultimately allowed by a judgment and decree dated July 03, 2024.

4. As stated earlier, upon the suit being initially decreed, and during pendency of the Title Appeal, the petitioner had initiated execution proceedings being Title Execution Case No. 8 of 2011. However, upon the decree being reversed in the Title Appeal, the Title Execution Case lost its significance and the same got dismissed.

5. Upon the second appeal being allowed by this Court and a decree for eviction again being passed, the petitioner instituted a fresh Execution Case being Title Execution Case No. 06 of 2025. The said case has been dismissed by the order impugned by observing that the same had been filed beyond the period of limitation from the date of the initial decree i.e. February 26, 2004. The executing court has held that the petitioners' remedy lies in getting the dismissed Title Execution Case No. 8 of 2011 restored and not in filing a fresh Title Execution case. Hence the revisional application.

6. Learned advocate appearing for the petitioner invites the attention of this Court to a three-Judge Bench judgment of the Hon'ble Apex Court in the case of **Chandi**

Prasad & Ors vs Jagdish Prasad & Ors reported at **(2004)**

8 SCC 724 wherein it was observed that where a higher forum entertains an appeal and passes an order on merits, the decree of Trial Court merges with the decree of the appellate court and then it is the decree of the appellate court that becomes enforceable and executable.

7. Learned advocate appearing for the opposite party seeks to defend the order impugned.

8. Having heard the learned advocates for the respective parties and having considered the materials on record, this Court is satisfied that the order impugned suffers from gross illegality and material irregularity and the same accordingly deserves to be interfered with.

9. When the second appeal filed by the petitioner was allowed by the order dated July 03, 2024 the decree which became executable was the one dated July 03, 2024 passed by this Court in second appeal. ***Chandi Prasad & Ors*** (supra) is a clear authority for such purpose.

10. In such view of the matter, it could not have been held by the learned Executing Court that the execution case filed by the petitioner was barred by limitation, when the Execution case was filed within one year from the date of the second appellate decree dated July03, 2024.

11. For all the reasons aforesaid, the order dated February 24, 2026 is set aside and Title Execution Case No. 6 of 2025 is restored to its file. The learned executing court shall proceed with the execution case in accordance with law and dispose of the same as expeditiously as possible keeping in mind the mandate of the Hon'ble Apex Court in the case of ***Periyammal (Dead) Through LRs & Ors. –vs.- V. Rajamani & Anr.*** reported at ***(2025) 9 SCC 568.***

12. C.O. 1059 of 2026 stands disposed of. No costs.

13. There shall be no order as to costs.

(Om Narayan Rai, J.)