

23.06.2026

Ct. No. 237
Sl. Nos.24 & 25
akd

In the High Court at Calcutta

Criminal Revisional Jurisdiction

C. R. R. 1610 of 2026
(C. R. A. N. 1 of 2026)

In Re: ***Arun Kumar Pan***

... Petitioner

W I T H

C. R. R. 2013 of 2019
(C. R. A. N. 1 of 2026)
(C. R. A. N. 2 of 2026)

In Re: ***Arun Kumar Pan***

... Petitioner

Mr. Kartik Das

... for the petitioner

Mr. Indranath Mitra
Mr. Kusal Kumar Mukherjee
Mr. Arijit Bose

... for opposite party no. 2

Re : C. R. A. N. 1 of 2026 with C. R. A. N. 2 of 2026

CRAN 1 of 2026 is an application for restoration. CRAN 2 of 2026 is an application for condonation of delay.

Having regard to the averments made in the application being CRAN 1 of 2026, this Court is of the opinion that the petitioner has sufficiently explained the reasons for his absence before this court on 30.01.2024.

Accordingly, the order dated 30.01.2024 is set aside.

CRAN 1 of 2026 is allowed upon condonation of delay. Accordingly, CRAN 2 of 2026 is also allowed.

CRR 2013 of 2019 is restored.

Re : C. R. R. 1610 of 2026 with C. R. R. 2013 of 2019

In view of the common questions of fact involved, both revisional applications are being disposed of by this common order.

The facts giving rise to the present revisional applications may be summarised as follows:

It appears that the petitioner purchased a plot of land measuring approximately 0.044 acres comprised in Hal Plot No. 659, Sabek Plot No. 77, Mouza–Khudsole, Khatian No. 2913, J.L. No. 228, within the district of Bankura. It further appears that Opposite Party No. 2 had also purchased a parcel of land measuring approximately 0.0752 acres within the said Hal Plot No. 659 on November 15, 1999.

Following his purchase in the year 2013, the petitioner commenced construction of a single-storied building on the said property. Alleging infringement of his easementary rights and seeking removal of the obstruction allegedly caused on his pathway, Opposite Party No. 2 instituted M.P. Case No. 869 of 2016 under Section 147 of the Code of Criminal Procedure, 1973.

By an ex-parte interim order dated June 28, 2017, the learned Sub-Divisional Magistrate, Sadar, Bankura directed the petitioner to remove the boundary wall.

Subsequently, the matter was taken up for hearing by the learned Executive Magistrate, Sadar, Bankura on February 6, 2019. By order of the same date, the learned Magistrate directed the petitioner to remove the boundary wall and made the interim order dated June 28, 2017 absolute.

Aggrieved thereby, the petitioner preferred a criminal revision before the learned District & Sessions Judge, Bankura. The said revision was dismissed by order dated July 29, 2019. Thereafter, the petitioner filed CRR 2013 of 2019 challenging the order of the learned District & Sessions Judge dated July 29, 2019.

By order dated August 21, 2019, a learned Judge of this Court was pleased to stay the operation of the impugned order dated February 6,

2019 for a period of six weeks from the date of the order. However, the revisional application was subsequently dismissed for default on January 30, 2024. The petitioner thereafter filed an application for restoration, which has been allowed today.

It further appears that, in the year 2016, Opposite Party No. 2 also filed an application under Section 144 of the Code of Criminal Procedure, 1973, which was registered as M.P. Case No. 811 of 2016. Upon such application, the learned Magistrate passed an ex parte order directing the Officer-in-Charge, Bankura Police Station, to ensure that none of the parties altered the nature and character of the suit property until further orders.

The petitioner challenged the said order before the learned District & Sessions Judge, Bankura. By order dated August 1, 2017, the learned Sessions Judge was pleased to set aside the order passed by the learned Magistrate.

It does not appear that Opposite Party No. 2 challenged the said order. It further appears that, following the dismissal of CRR 2013 of 2019 for default on January 30, 2024, M.P. Case No. 869 of 2016 was once again taken up for hearing. By order dated March 30, 2026 (incorrectly recorded as March 30, 2025), the learned Executive Magistrate, Sadar, Bankura again directed the petitioner to remove the alleged obstruction, namely, the boundary wall erected on the pathway claimed by Opposite Party No. 2. Aggrieved by the said order, the petitioner has filed CRR 1610 of 2026.

It is pertinent to note that Opposite Party No. 2 has also instituted Title Suit No. 35 of 2017 against the petitioner and others, seeking declaration of his right, title and interest in respect of the property in question. The said suit is presently pending before the competent civil court.

Undoubtedly, the factual matrix narrated above is somewhat convoluted. However, for the sake of clarity, it must be observed that the learned Magistrate was not justified in passing the interim order dated June 28, 2017 in M.P. Case No. 869 of 2016. By the said interim order, the learned Magistrate effectively granted the final relief sought by Opposite Party No. 2. The learned Magistrate could not, by way of an interim order, have directed the petitioner to remove the boundary wall.

It must further be observed that the dispute between the parties is essentially civil in nature, involving questions relating to their respective rights, title and interests in the property. In such circumstances, there was no justification for the learned Magistrate to make the interim order dated June 28, 2017 absolute by the order dated February 6, 2019. As noted above, a civil suit concerning the subject matter was already pending before the competent civil court. Consequently, the order dated February 6, 2019 cannot be sustained in law.

The order dated March 30, 2025 is, in substance, merely an attempt to enforce the order dated February 6, 2019. Accordingly, the order dated March 30, 2025 also cannot be sustained in law.

Accordingly, CRR 2013 of 2019, which challenges the order dated February 6, 2019 passed by the learned Executive Magistrate, Sadar, Bankura and affirmed by the learned District & Sessions Judge, Bankura by order dated July 29, 2019, is allowed by setting aside the said two orders.

CRR 1610 of 2026, challenging the order dated March 30, 2025, is also allowed by setting aside the said order.

In view of the disposal of the revisional applications, CRAN 1 of 2026 also stands disposed of.

Needless to observe, there was no occasion in these revisional proceedings to adjudicate upon the respective rights, title and interests of the parties in the property in question.

The parties shall be at liberty to raise all available contentions before the competent civil court in the pending title suit.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Kausik Chanda, J.)