

02.04.2026
Item No.80 (DL)
Court No.06
AJ.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 3308 of 2025

Smt. Uma Dey

-Vs-

Ratanlal Barman

Mr. Ayanabha Bhattacharyya.

Ms. Dipanwita Ganguly.

....for the petitioner.

Mr. Dhananjay Banerjee,

Mr. Agniswar Chowdhury,

Mr. Praloy Hazra.

....for the opposite party.

1. This revisional application is directed against an order dated May 13, 2025 passed by the learned Additional District Judge, 2nd Court, Serampore in Misc. Appeal No. 11 of 2025 whereby the said misc. appeal has been dismissed upon holding that the same was not maintainable.

2. The petitioner is a judgment debtor. A suit for eviction being Title Suit No. 108 of 2006 had been instituted by the opposite party herein against the petitioner in the Court of the learned Civil Judge (Junior Division), 1st Court at Serampore. The said suit was decreed on August 31, 2009.

3. The said decree was put into execution by the opposite party by filing Title Execution Case No. 10 of 2013. In the said Title Execution case, the opposite party filed an application under Order

XXI Rule 97 of the Code of Civil Procedure, 1908, which was registered as Misc. Case No. 56 of 2019.

4. The said misc. case was allowed by an order dated February 18, 2025. Assailing the said order dated February 18, 2025, the petitioner preferred Misc. Appeal No. 11 of 2025.

5. The said misc. appeal was entertained and an ad-interim order of stay of the execution case was passed on March 05, 2025. Subsequently, by the order impugned the misc. appeal was dismissed by the learned Appellate Court holding the same to be not maintainable on the ground that an order passed on an application under Order XXI Rule 97 of the Code was not appealable under Order XLIII of the Code.

6. The Appeal Court was of the view that the petitioner ought to have filed a regular Title Appeal.

7. The petitioner then filed Title Appeal No. 37 of 2025 but the same got barred by limitation by the time it was preferred. Accordingly, the petitioner filed an application for condonation of delay under Section 5 of the Limitation Act. Such application was allowed and the execution proceedings were stayed by an order dated January 17, 2026. The said order was however vacated in view of the petitioner's conduct in not complying with the condition of stay.

8. The petitioner is now up in revision against the order dated May 13, 2025.

9. Mr. Bhattacharyya, learned Advocate appearing for the petitioner submits that the learned Appellate Court has committed a jurisdictional error in dismissing the petitioner's misc. appeal by holding that the same was not maintainable. He further submits that the Title Appeal that has been filed, has been so filed on improper legal advice inasmuch as the misc. appeal was very well maintainable. In support of his contention, he relies on a judgment of the Hon'ble Division Bench of this Court in the case of ***Surajmal Jain -Vs- Prabir Kumar Sett*** reported at ***1980 (2) CLJ 161***.

10. Inviting attention of this Court to paragraph 28 of the revisional application he further submits that the petitioner would withdraw Title Appeal No. 37 of 2025 pending before the learned Additional District Judge, 1st Court at Serampore if it is ultimately found by this Court that the misc. appeal originally preferred by the petitioner was maintainable.

11. Mr. Banerjee, learned Advocate appearing for the opposite party fairly submits that although, he does not contest the legal proposition that misc. appeal was maintainable yet, he would urge the Court to take into consideration the conduct of the petitioner. He submits that the conduct of the

appellant would show that the petitioner has been bent upon dragging the execution proceedings so as to deprive the decree holder of the fruits of the decree.

12. Inviting the attention of this Court to an order dated March 12, 2026 (copy whereof has been handed up to Court today) passed by the learned Additional District and Sessions Judge, 1st Court, Serampore, Hooghly in Title Appeal No. 37 of 2025. It is submitted that after getting the order of stay of execution, the petitioner did not comply with the conditions of stay and the amount required to be deposited by the petitioner was not deposited. The stay order has thus been vacated.

13. Having heard the learned Advocates appearing for the respective parties and having considered the material-on-record, this Court is of the view that the order impugned cannot be sustained.

14. In view of the binding precedent in form of the judgment of the Hon'ble Division Bench of this Court in the case of **Surajmal Jain** (supra), the learned Appellate Court was not right in holding that the misc. appeal filed by the petitioner was not maintainable. In the said case, the Hon'ble Division Bench has clearly held that *"this Court in the matters of practice and procedure have made no distinction between the orders which are deemed to be decrees under Section 2(2) and the*

orders which have the force of decrees” and further that “appeals preferred against orders passed under Rules 98 or 100 of Order 21 of the Code should be classified as appeals from orders and they are required to be heard under Order 41 Rule 11 of the Code of Civil Procedure.”

15. For the aforesaid reason, the order impugned is set aside and Misc. Appeal No.11 of 2025 is restored to file.

16. It is noticed that by the order dated March 05, 2025 passed in Misc. Appeal No. 11 of 2025 the order dated February 18, 2025 passed by the learned Executing Court thereby granting police help had been stayed till disposal of the said appeal. Since the appeal has been revived such stay would also revive but the same shall initially continue only for a month from date and thereafter in terms of orders passed by the learned Appellate Court.

17. Mr. Banerjee, learned Advocate appearing for the opposite party submits that the petitioner should be put on terms for enjoying the stay order. It will be open to the opposite party to make appropriate application before the Appellate Court either during the operation of the order of stay (by dint of this order) or at any time thereafter for imposing appropriate conditions for continuation of such stay that has been granted only for a month.

18. In case any such application is made, the learned Appellate Court is requested to dispose of the same as expeditiously as possible and preferably within a fortnight from the date of filing thereof after giving an opportunity of controverting the same to the petitioner. The learned Appellate Court is also requested to dispose of the Misc. Appeal expeditiously, without granting any unnecessary adjournment to either of the parties.

19. As already submitted by Mr. Bhattacharyya, the petitioner shall in terms of the undertaking given to Court in paragraph 28 of the revisional application withdraw Title Appeal No. 37 of 2025 forthwith. Since the same Appellate Court has jurisdiction to hear both the Title Appeal as well as the Misc. Appeal, the learned Appellate Court is requested to ensure that time is not lost for want of records and the learned Appellate Court is requested to proceed with the Misc. Appeal on the basis of the records already available with the Court earlier in the form of Misc. Appeal and thereafter in the shape of Title Appeal filed by the petitioner.

20. C.O. 3308 of 2025 stands disposed of with the above observations. There shall be no order as to costs.

21. 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.)