

15.06.2026
Item No.7(DL)
Court No.06
AJ.

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

C.O. 3678 of 2025

**Sri Narayan Chandra Modak
-Vs-
Sri Susanta Kumar Dutta**

Mr. Gourab Ghosh.
.....for the petitioner.

1. Affidavit of service filed in Court today is taken on record.

2. Learned Advocate appearing for the petitioner submits that a notice of this revisional application has also been served upon the learned Advocate representing the opposite party in the learned Trial Court.

3. None appears for the opposite party despite service.

4. This revisional application is directed against an order dated September 06, 2025 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah in Misc. Case No. 37 of 2025 which has been registered pursuant to an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 being filed by the opposite party seeking setting aside of an ex parte decree of eviction passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah in Ejectment Suit No. 76 of 2022.

5. Ejectment Suit No. 76 of 2022 had been instituted by the petitioner seeking eviction of the opposite party inter alia on the ground of default in payment of rent and reasonable requirement. The said suit was decreed ex parte on July 26, 2024. About 11 months after the passing of the decree, the opposite party filed an application under Order XI Rule 13 of the Code for setting aside the *ex-parte* decree along with an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the said application for setting aside the ex parte decree.

6. The opposite party also filed an application for stay of the execution case that had been initiated by the petitioner seeking execution of the decree of eviction passed in Ejectment Suit No.76 of 2022.

7. The learned Trial Court has entertained the application for stay and stayed the execution case without first disposing of the application under Section 5 of the Limitation Act, 1963. The petitioner is aggrieved by such an order.

8. While a Court is not powerless to grant stay of execution even while the application under Section 5 of the Limitation Act remains pending in situations that merit such stay orders, yet before passing such orders the learned Court would have to reach a conclusion that there is a *prima facie* case made out by the applicant for grant of stay.

There is nothing recorded in the impugned order to that effect. The only reason given by the learned Trial Court is that the execution case, if allowed to be proceeded with the Misc. Case, would be rendered infructuous. This could not have been and cannot be a good reason to stay an execution that too when the Misc. Case has been filed way beyond the period of limitation.

9. While the learned Trial Court has sought to balance the equities by directing payment of occupation charges to the tune of Rs.5,000/- per month, here again the petitioner has been left aggrieved. Learned Advocate appearing for the petitioner submits that the learned Trial Court has not passed any order as regards payment of arrears of the occupation charges since the decree of eviction was passed as far back as on July 26, 2024.

10. Since the order does not record any *prima facie* satisfaction as regards the strength of the Misc. Case that would have justified grant of stay of the execution case and the mere reason that if the execution case is not stayed then the same would become infructuous, does not satisfy the conditions for grant of stay in the present fact situation where the Misc. Case is delayed by several months, therefore the order directing stay of the execution case deserves to be interfered with.

11. Accordingly, the order impugned is set aside.

12. The learned Trial Court shall hear out the application for stay afresh and pass appropriate orders in accordance with law.

13. With the aforesaid observations, C.O. 3678 of 2025 stands disposed of. There shall be no order as to costs.

14. 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.)