

02.02.2026
Court No. 06
ML 138
February 2026
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 4161 of 2025

Partha Pratim Dutta
-Versus-

Partha Chatterjee & Anr.

Mr. Mukul Lahiri, Sr. Adv.,
Mr. Durga Prasad Dutta,
Mr. Souvik Sen

.....for the petitioner

- 1) Supplementary affidavit filed on behalf of the petitioner is taken on record.
- 2) The petitioner is aggrieved by an order dated November 21, 2025 passed by the learned Civil Judge (Junior Division), 1st Court, Serampore, Hooghly in connection with Misc. Case No. 17 of 2023.
- 3) The petitioner filed an application under Section 47 of the Code of Civil Procedure (CPC), inter alia, requesting the Court to dismiss the execution case. It was stated that the decree was inexecutable. The ground taken was that summons of Title Suit No. 72 of 2018 was not served and the suit was decreed ex parte. The petitioner came to know about the said decree only on January 05, 2023, when a person arrived at the decreetal property and asked the petitioner to vacate the property. The application was rejected.
- 4) The provisions of Section 47 of the CPC are attracted only when a challenge is thrown

to the decree itself on the ground that the decree cannot be either discharged or satisfied or executed on certain grounds.

5) The Misc. Case No. 17 of 2023 was not maintainable. The grounds taken in the said application were not relating to execution, discharge or satisfaction of the decree.

6) It appears that by an order dated December 13, 2024, the learned Court directed that the Title Execution Case shall remain stayed till disposal of the Misc. Case No. 17 of 2023 provided occupational charges of Rs. 1,000/- per month, as occupational charges. The arrears were directed to be paid on and from December 15, 2021. The arrears were directed to be paid within three months from the passing of the order.

7) I find no illegality in the order impugned. The learned Court rightly rejected the application under Section 47 of the Code of Civil Procedure.

8) An application under Section 47 of the Code of Civil Procedure can be filed if the decree is inexecutable on the ground that the same is nullity, i.e. passed in the name of a dead person or by a court which lacked pecuniary jurisdiction or that due to change of law the decree cannot be executed or the decretal property is no longer in existence and/or on such other similar grounds.

9) The ground taken by the petitioner that the suit was decreed ex parte, as a result of which the decree had become inexecutable, is not a ground on which the decree can be held

to be inexecutable and the execution case can be dismissed.

10) However, it is submitted that the petitioner has already filed an application under Order IX Rule 13 of the Code of Civil Procedure, which is pending adjudication. This Court is of the view that the said application being Misc. Case No. 16 of 2023 must be decided on its own merits.

11) Accordingly, C.O. 4161 of 2025 is disposed of. The execution case is maintainable and is not liable to be dismissed.

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

(Shampa Sarkar, J.)