

28.01.2026
Court No. 06
Item No.11
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 4456 of 2025

Ananda Dai
-Versus-

Md. Nasiruddin Miya & Anr.

Mr. N. K. Das,
Mr. Jahangir Hossain,
Md. Kaif Hossain

.....for the petitioner

Mr. Pratip Kumar Chatterjee, Sr. Adv.,
Mr. Ashish Deb,
Ms. Maitrayee Chatterjee

....for the O.P. Nos. 1 & 2.

1) This Court is of the view that the learned Civil Judge, (Junior Division), 2nd Court at Kandi has committed an error of law by rejecting the application for stay of the execution case on the ground that the said application could not be decided without hearing the plaintiffs/decreed-holders.

2) This Court does not dispute that the prayer for stay ought to have been decided upon hearing the plaintiffs/decreed-holders. The only issue is whether the application could have been rejected without even directing the petitioner/defendant to serve a copy of the application upon the plaintiffs/decreed-holders and without giving the petitioner an opportunity to place his case. It also appears that an application for condonation of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure is pending. This Court is of the view that the application for stay

ought to have been decided on merits. Accordingly, the order dated October 31, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court at Kandi in Misc. Case No. 29 of 2025 is set aside.

3) The learned Trial Court is directed to re-hear the said application on its own merits. This Court has not made any observations on the right of the petitioner to be granted a stay. It is within the jurisdiction of the Court whether the grant stay of the execution or not, but Court was required to hear the application upon service to the opposite parties. Here the Court failed to exercise jurisdiction vested by law.

4) Accordingly, the revisional application is disposed of without any order as to costs.

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

(Shampa Sarkar, J.)