

28.04.2026
Item No.02 (DL)
Court No.04
AJ.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION**

C.O. 31 of 2026

Sukhendra Nath Banik

-Vs-

Narendra Nath Banik & Anr.

Ms. Sunandita Banik.

...Attorney holder (in person).

Mr. Abhimanyu Banerjee.

...for the opposite parties.

1. This revisional application is directed against Order No.95 dated January 28, 2026 passed by the learned Civil Judge (Junior Division), Alipurduar in Title Execution Case No. 04 of 2022 whereby the petitioner's application seeking demolition of a structures/buildings over the land described in Schedule B(i) of the decree has been held by the learned Court to be misconceived while observing that *"execution for recovery of possession is already underway"*.

2. The petitioner had instituted Title Suit No. 112 of 2010 before the learned Civil Judge (Junior Division), Alipurduar praying inter alia for a decree for declaration and permanent injunction. Such suit was decreed ex parte on December 08, 2011 in the following terms :-

"That the suit be decreed ex parte. The plaintiff gets a decree of declaration whereby the plaintiff's right,

title and interest over the suit land is declared and his possession over the suit land is confirmed. Defendants are directed to be restrained from causing any disturbance in plaintiff's possession of the suit property”.

3. The said decree was put in execution in the year 2022 since the opposite parties allegedly violated the order of injunction. In the said Title Execution Case No. 04 of 2022 the opposite parties made an application under Section 47 of the Code of Civil Procedure, 1908 which was registered as Misc. Case No. 5 of 2025. Such Misc. case was ultimately dismissed by an order dated February 20, 2025.

4. Thereafter, the opposite parties applied under Order XXI Rule 97 of the Code which was registered as Misc. Case No. 37 of 2025. The said Misc. case too ended in dismissal. The matter was carried in appeal being T.A. 14 of 2025 before the learned Additional District Judge, 2nd Court, Alipurduar. An order dated September 23, 2025 staying the execution case was passed in the said appeal.

5. Such order was challenged before this Court by filing C.O. 201 of 2025. Such C.O. was ultimately disposed of by an order dated November 26, 2025 thereby setting aside the order dated September 23, 2025 whereby the

execution case was stayed. The execution case is thus proceeding.

6. In the said execution case, the petitioner filed an application seeking a direction *interalia* upon the District Magistrate and the Sub-Divisional Officer for demolition of buildings/structures allegedly situated at property mentioned in schedule B(1) of the plaint. By the order impugned, the said application has been found to be misconceived. Hence the revisional application.

7. Ms. Banik, the constituted Attorney for the petitioner (daughter of the petitioner) submits that the learned Trial Court has committed a jurisdictional error in not directing demolition of the buildings/structures standing on the B(1) schedule land.

8. Learned Advocate appearing for the opposite parties submits that the petitioner's application is misconceived. It is submitted that the said application is in effect seeking execution of an order passed by this Court in WPA 2140 of 2025 directing demolition of the same property.

9. It is further submitted by Mr. Banerjee that none of the pleadings made in the revisional application is admitted by the opposite parties.

10. Ms. Banik, refutes such contention and submits that the order passed by this Court in WPA 2140 of 2025 was in the context of an unauthorized construction demolition whereof was sought by invoking writ jurisdiction while the prayer made before the learned Executing Court was (is) for demolition of structures/buildings in execution of the decree.

11. Heard the respective parties and considered the material-on-record.

12. It is not in dispute that there is a decree for declaration and permanent injunction as well as confirmation of possession of the plaintiff. If a decree for permanent injunction has been violated or alleged to have been violated then the Executing Court is not powerless to execute such decree so as to ensure that such decree does not remain paper decree.

13. The order passed by this Court in writ jurisdiction while disposing of WPA 2140 of 2025 cannot be wielded as a shield by the opposite parties to prevent execution and demolition of any structure or building that has been constructed or raised in violation of the decree of injunction. Law in such regard is well settled that if a decree of injunction is passed

and any act in violation of such injunction is committed, the Court is not powerless to undo such act in terms of the provisions of Order XXI Rule 32(5) of the Code.

14. The said provision emphasizes that “*act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor*” and the “Explanation” makes it explicit that “*the act required to be done*” covers prohibitory as well as mandatory injunctions”

15. In such view of the matter, the Executing Court has every authority to ensure compliance with the decree of permanent injunction by passing orders for carrying out demolition of infringing structures as well.

16. This revisional application is therefore disposed of by requesting the learned Executing Court being learned Civil Judge (Junior Division), Alipurduar to take appropriate steps for execution of the decree dated December 08, 2011 in accordance with law.

17. It has been brought to the notice of this Court that by an order dated September 02, 2024, passed by a coordinate Bench of this Court in C.O. 73 of 2024 the learned Executing Court had been directed by this Court “to

adjudicate the execution case as early as possible and positively within a period of ten (10) months from the date of communication” of the said order. It is noticed that in the order dated November 26, 2025 passed in C.O. 201 of 2025 this Court had referred to the judgment of the Hon’ble Supreme Court in the case of ***Periyammal (Dead) & Ors. -Vs- V. Rajamani & Anr.*** reported at **2025 INSC 329** which mandates expeditious disposal of execution cases.

18. In such view of the matter, this Court requests the learned executing Court to proceed with the execution case in accordance with law and to pass appropriate orders to ensure that any impediment or obstruction of any kind, whether in the nature of a building or structure, is removed at the cost and expense of the violator, in accordance with law, if the learned Court comes to the conclusion that the same has been put up or constructed in violation of the decree passed by the Court.

19. C.O. 31 of 2026 stands disposed of with the above observations. There shall be no order as to costs.

20. 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.)