

S/L 07
21.04.2026
Court No.4
(S.R.)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

CO 55 of 2026

Suraj Buildcon Pvt. Ltd.

v.

Sri Dhanilal Roy & Anr.

Mr. Surojit Nath Mitra, Sr. Adv.

Mr. Debasish Mukhopadhyay

Mr. Rajat Das

Ms. Madhushri Dutta

Ms. Bipasha Mrug ... *For the Petitioner.*

Mr. Shashi Prakash Kanodia

... *For the Opposite parties.*

1. The petitioner is aggrieved by the long pendency of its application under Section 151 of the Code of Civil Procedure, 1908 praying, *inter alia*, for lifting the stay granted in Execution Case being OC (Execution) Case No.15 of 2024 pending before the learned Civil Judge (Junior Division) at Jalpaiguri. Such application under Section 151 has been filed by the petitioner in Title Appeal No.13 of 2022 pending before the learned Additional District Judge, 2nd Fast Track Court, Jalpaiguri.
2. The petitioner had instituted Title (Eviction) Suit No.56 of 2019 for eviction of the opposite party no.1 from the suit property. Such suit was decreed by way of a judgment on admission on August 11, 2022.
3. Such judgment has been carried in appeal by the opposite party no.1, which is Title Appeal No.13 of 2022 pending before the learned Additional District

Judge, Second Fast Track Court, Jalpaiguri. In the said appeal the opposite party no.1 also filed an application for stay of operation of the judgment and decree impugned in the appeal.

4. During pendency thereof, the petitioner put the aforesaid eviction decree dated August 11, 2022 passed by the learned Civil Judge (Junior Division) at Jalpaiguri in Title Suit No.56 of 2019 into execution by filing OC (Execution) Case No.15 of 2024.
5. In view thereof, the application for stay was pressed by the opposite party no.1 and an order dated May 16, 2025 was passed by the learned Additional District Judge, Second Fast Track Court at Jalpaiguri in Title Appeal No.13 of 2022 thereby staying the eviction decree.
6. The said order was challenged before this Court by filing CO 151 of 2025. Such civil revisional application was disposed of by this Court by an order dated August 1, 2025 thereby setting aside the order dated May 16, 2025 passed by the learned Appellate Court and directing the learned Appellate Court to dispose of the stay application, *“imposing payment of occupation charges at current market rates as a precondition”* if stay was granted, upon hearing both the parties within three weeks from the date of communication of the said order to the learned Appellate Court.

7. By the same order, the learned Appellate Court was also directed to dispose of the opposite party no.1's application under Order 6 Rule 17 of the Code upon granting adequate opportunity to both the parties to exchange their pleadings. Such disposal was directed to be completed expeditiously, preferably within three weeks from the date of disposal of the stay application.
8. In terms of the said order dated August 01, 2025 passed in CO 151 of 2025, the stay application filed by the opposite party no.1 was disposed of by an order dated August 28, 2025 passed by the learned Appellate Court thereby granting stay *“over the impugned judgment and also on the Execution Case subject to payment of Rs.60,000/- per month”* as occupation charge in respect of the suit land from the date of the decree with a further direction to clear the arrears by five installments till further orders. The learned Appellate Court also observed that in default necessary order may be passed *“to vacate the stay over the instant judgment as well as Execution Case.”*
9. The petitioner on or about December 16, 2025 filed an application under Section 151 of the Code alleging that the opposite party no.1 has failed to comply with the conditions of stay and, as such, the petitioner should be allowed to proceed with the execution case. Such application has not yet been

disposed of. Hence, the present revisional application.

10. Mr. Mitra, learned Senior Advocate appearing for the petitioner submits that the opposite party no.1 has been remiss in complying with the conditions of stay imposed by the learned Appellate Court by its order dated August 28, 2025. It is submitted that in such view of the matter, having regard to the direction contained in the order dated August 28, 2025 passed by the learned Appellate Court, which in turn was passed in terms of the order dated August 01, 2025 passed by this Court in CO 151 of 2025, directing stay order to be passed only on condition of payment, the petitioner's execution case should be allowed to be proceeded with.
11. Mr. Kanodia, learned advocate appearing for the opposite parties refutes such contention of Mr. Mitra and submits that there has been no default on the part of the opposite party no.1 in complying with the conditions imposed by the learned Appellate Court while staying the judgment and decree impugned before it and also the execution case. It is submitted that the opposite party no.1 has been paying the current monthly occupation charges. He submits that since the learned Appellate Court has not fixed any installment, the arrears could not be paid and an application praying for fixation of installment has been filed by the opposite party no.1

before the learned Appellate Court, which is pending.

12. It is further submitted that the learned Appellate Court should also dispose of the opposite party no.1's application for amendment under Order 6 Rule 17 of the Code.

13. Heard learned advocates appearing for the respective parties and considered the material on record.

14. It is not in dispute that by the order dated August 28, 2025, the learned Appellate Court had imposed two conditions for stay of the eviction decree and its execution. One was (is) to make payment of monthly occupation charges at the rate of Rs.60,000/- per month by the tenth of each succeeding month and the other was (is) to make payment of arrears of such occupation charges calculated from the date of the judgment and decree in five installments. Once it has been alleged by the petitioner that the opposite party no.1 has not complied with the condition or conditions of stay, it is incumbent on the learned Appellate Court to consider such petition filed by the petitioner at the earliest to ensure that the stay, which is subject to certain payment conditions, is not continued in violation of such condition, which had been imposed in terms of the order passed by this Court in CO No.151 of 2025.

15. In such view of the matter, the learned Appellate Court is requested to consider and dispose of the petitioner's application under Section 151 of the Code filed on December 16, 2025, in accordance with law upon hearing both the parties and by deciding as to whether the order dated August 28, 2025 passed by the learned Appellate Court is being followed or the condition or conditions imposed thereby has or have been observed in breach. The learned Appellate Court is requested to dispose of the said application under Section 151 of the Code as expeditiously as possible and preferably within a period of one month from the next date fixed without granting any unnecessary adjournment to either of the parties.

16. It is made clear that the learned Appellate Court must first come to the conclusion as to whether its order dated August 28, 2025 by which conditions had been imposed for granting stay of execution in terms of the directions passed by a Coordinate Bench of this Court by the order dated August 1, 2025 passed in CO 151 of 2025 is being complied with or not and pass necessary consequential orders.

17. This direction is being made in view of the fact that the order dated August 1, 2025 passed by this Court in CO 151 of 2025 had made it incumbent on the learned Appellate Court to first dispose of the opposite party no.1's application for stay (i.e. prior to the opposite party no.1's application under Order

VI Rule 17 of the Code) upon “*imposing payment of occupation charges at current market rates as a precondition,*” if stay was granted. As an obvious consequence and corollary thereof the conclusion as to whether stay granted in terms thereof should be continued or not must also be arrived at first prior to the consideration of the application under Order 6 Rule 17 of the Code filed by the opposite party no.1, which is still pending

18. Since there is already a direction by a Coordinate Bench of this Court directing the learned Appellate Court to dispose of the opposite party no.1’s application under Order 6 Rule 17 of the Code, the learned Appellate Court is requested to ensure that the directions contained in the said order are complied with and nothing in this order should otherwise prevent the learned Appellate Court from disposing of the opposite party no.1’s application under Order 6 Rule 17 of the Code expeditiously, in accordance with law, upon deciding the application under Section 151 of the Code as aforesaid.

19. Needless to mention that the learned Appellate Court shall decide and dispose of the two applications on their own merits independently in accordance with law, as no opinion has been expressed by this Court on the merits of either of the two applications.

20. CO 55 of 2026 stands disposed of with the above observations. No 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.)