

JPD-06
Ct No.07
10.06.2026
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 70 of 2026
IA No: CAN 1 of 2026

Sri Ajoy Kumar Roy
Vs.
Sri Gouranga Chandra Roy

Mr. Narendra Nath Das,
Mr. Pragyadip Basuia,
Mr. Jagesh Ch. Roy,
Mr. Debojyoti Roy,
Ms. Anamika Roy

....for the petitioner

1. The present revisional application has been preferred against an order refusing the petitioner's prayer for stay.
2. The brief facts of the case are that a preemption order under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 was passed *ex parte* against the petitioner on April 10, 2013.
3. Thereafter, an application under Section 47 of the Code of Civil Procedure was preferred by the present revisionist petitioner in connection with the execution case levied in respect of the said preemption order. The said Section 47 application was dismissed.
4. Simultaneously, an application under Order IX Rule 13 was also taken out by the petitioner, giving rise to Miscellaneous Case No. 71 of 2025

(R), along with an application for condonation of delay in filing the same.

5. During pendency of the condonation application, a prayer for stay of the preemption order was made by the petitioner, which was rejected by the impugned order.
6. Learned counsel for the petitioner argues that the preemption order was palpably bad in law in view of the decision of the Hon'ble Supreme Court in *Barasat Eye Hospital & Ors. vs. Kaustabh Mondal*, reported at (2019) 19 SCC 767. It is contended that the preemptor/present opposite party, despite having been given an opportunity to put in the consideration amount for the sale sought to be preempted, failed to deposit the same in time, which vitiates the preemption order itself.
7. It is argued that in such circumstances, the learned Trial Judge ought to have granted stay.
8. However, from the facts of the case, it is evident that the learned Trial Judge could not be faulted much in finding no *prima facie* case for grant of stay at this premature stage, when the condonation application in connection with the application under Order IX Rule 13 of the Code has not yet been disposed of.
9. Even if it is to be assumed that the petitioner has a strong arguable case insofar as the legality of the preemption order is concerned, the petitioner has

to cross the hurdle of the condonation application and thereafter Order IX Rule 13 of the Code prior to the Court adjudicating the legality of the preemption order.

10. In the present case, the petitioner, obviously being aware of the preemption order, took out an application under Section 47 of the Code of Civil Procedure and having failed therein, is now seeking stay in connection with a condonation application filed in support of an application for restoration of the preemption case.
11. Thus, no jurisdictional error and/or gross miscarriage of justice has been brought about by the impugned order to justify interference under Article 227 of the Constitution of India.
12. Accordingly, CO 70 of 2026 is dismissed, thereby affirming the impugned order, without any order as to costs.
13. However, it is made clear that the refusal of stay by the learned Trial Judge at this juncture shall not preclude the petitioner from renewing such prayer as and when the application for condonation is allowed, if at all.
14. CAN 1 of 2026 is accordingly disposed of as well.

(Sabyasachi Bhattacharyya, J.)