

In the court of the Additional District Judge 1st Court, Cooch Behar

Title Appeal No. 12 of 2024

Present : Mukul Kumar Kundu
Additional Dist. Judge,
1st Court, Cooch Behar.
JO Code No. WB00654

Order No. 12

Dated 30.07.2025

Today is fixed for passing order in respect of stay petition dated 13.05.2025 filed by the appellant.

Both parties file lawyer's hazira.

Perused the stay petition dated 13.05.2025 filed by the appellant, written objection dated 29.07.3035 and other material on record as well as submission.

It is submitted by the learned Advocate for the appellant that the instant appeal has been preferred against the impugned judgment and decree passed on 22.07.2024 by the Ld. Civil Judge (Sr. Division) at Sadar Cooch Behar. It is further submitted that after filing of the instant appeal a petition for stay was filed by the appellant for staying the operation of the impugned judgment and decree when the Execution Case was not filed but after hearing of the matter learned Court was pleased to reject the said petition for stay at that stage on 18.09.2024. It is further submitted that the appellant got information that an execution case has been filed by the respondent/decree holder being Title execution No. 01/2025 for execution of the impugned decree of eviction which has been fixed on 23.07.2025 for execution report. In this circumstance if stay is not granted against the execution of the impugned judgement and decree the purpose of filing of the instant appeal would be infructuous and frustrated and legal right of the appellant will be infringed. Therefore, the appellant/judgement-debtor prayed for stop and stay of the execution proceeding at the impugned decree.

On the other hand learned Advocate for the respondent/plaintiff /decree holder would submit by filing written objection that immediate after filing of the instant appeal, the similar prayer was filed by the appellant which was rejected by the Ld. District Judge, Cooch Behar itself holding that even if no stay is granted, the purpose and object of filing of the appeal would not be frustrated. Therefore, the similar type of petition again at this stage is not maintainable or entertainable by this learned court or barred by law or res-judicata as the object of such filing this petition is only to deprive the plaintiff/decree-holder from getting the fruit of the decree and to drag this proceeding year after year. He raised question further that after their first prayer for stay was rejected by the District Judge, Cooch Behar before transfer of the present appeal and the said order of rejection binding upon the appellant/defendant since stands unchallenged. Therefore, he prayed for rejecting the petition again summarily.

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Contd...dated 30.07.2025

From perusal of the materials on record, I considered that the submission of the learned Advocate for the respondent/decreed-holder has sufficient force when the Id. Court (Ld. District Judge, Cooch Behar) itself had rejected the similar prayer after filing the appeal and the said order has not been challenged in any higher forum till today and that order has become binding. Therefore, I find no cogent reason for reopening the said order of rejection passed earlier and as such following that observation of the court made earlier on 18.09.2024 I have no other alternative than to reject the same again summarily where we know that in case the appellant succeeds in the appeal in future, the possession may be restored to him and hence it can not be said that for mere refusal to grant stay amounts to causing frustration to merit in the appeal. Accordingly, the prayer for stay filed by the appellant dated 13.05.2025 may be rejected at this stage.

Hence it is,

ORDERED

that the stay petition dated 13.05.2025 filed by the appellant/defendant stands rejected on contest without any order as to cost. Let a date be fixed for hearing of the appeal.

To 08.09.2025/09.09.2025/10.09.2025 for hearing of the appeal.

Both the parties do get ready on the date fixed.

Dictated & Corrected by,

Addl. Dist. Judge, 1st Court,
Cooch Behar.

Addl. Dist. Judge, 1st Court,
Cooch Behar.