

**Misc Appeal 07/2025**  
**CNR No.000691-2025**

**Order no.09 dated 10.09.2025 :-**

Today is fixed for hearing of the stay application that have been filed by the appellants, by virtue of the order dated 08.09.25.

The Ld Advocate for the respondent no 1 have filed a detailed objection against the application for stay. The copy is served.

Taken up the application dated 07.08.25 for hearing. Perused all the documents that have been filed by the parties for the perusal of this court. Heard both the sides Ld Advocates in details. Primarily the Ld Advocates of both the sides have echoed the contents of their respective claims made out in their respective applications which is why the crux of the contentions are required to be reproduced in brief for the purpose of clarity and better understanding.

The present appeal has been filed by one Lalu Saha and another against Kalu Saha and another, wherein the judgment and order dated 29.11.24 passed by the Ld Civil Judge (Jr Div) 2<sup>nd</sup> Court at Contai in J.Misc Case 20 of 2021 has been challenged. It needs to be said that the original proceeding was filed under section 8 and 9 of the W.B.L.R Act by the respondents which was allowed on contest vide the Judgment and order dated 29.11.24.

Now the present appeal has been filed on 01.03.25 and along with the appeal a separate application under section 5 of the Indian Limitation Act read with section 151 of the C.P.C was filed as the same was delayed. The affidavit was also filed in support of the same.

Apropos, the appeal case was transferred to this court for disposal by fixing the date for appearance before this court on 02.04.25.

Thereafter, on 02.04.25 the appellants have appeared and were directed to file fresh steps on 09.06.25. On 09.06.25 a prayer for time was filed and the said was allowed and the date was next fixed on 22.08.25.

Now, at this stage on 07.08.25 the appellants have filed a put-up petition along with an application for stay, but the said stay application was not moved, which is why the date for hearing was posted on the date fixed. Subsequently, the respondent no 1 have appeared on 19.08.25 and prayed for time. Then on the date which was already fixed on 22.08.25 it seems that the stay application was not moved and date was again fixed on 06.11.25.

At this point in time, it seems that on 08.09.25 the appellants have sought to move the application for stay on the ground of urgency and since the respondent no 1 had already appeared, the date was fixed today(10.09.25) for taking up the application for stay for hearing, in the presence of the respondent no 1 who have already appeared.

The respondent no 1 have filed a written objection against the prayer for stay, today, and the copy is served.

Now, it will be apt to mention here that by virtue of the impugned order/judgment dated 29.11.24 the decree-holders have already instituted an Execution Proceeding which was registered as Other Exe. No -03 of 25 and in the

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said execution proceeding, the Bailiff have already moved to the suit land to deliver possession by the order of the Ld Executing Court but could not delivered.

Now, the present appellants expects that the execution proceeding would be satisfied in the mean while and if it is fully satisfied, the appeal would be frustrated. This is the reason why the appellants now prays before this court to pass an order of stay so that the Other Execution Case No 03-25 pending before the Ld Court be stayed. The Ld Advocate for the appellants have drawn the attention of this court to one order of the Ld Executing court where the process of satisfying the impugned decree is sought to be made through Police Help. This was submitted as the immediate cause for praying for the grant of a stay order, so that the Other Exe Case be put on hold at least at this stage.

It is now of some significance to state that, in the application for stay dated 07.08.25 the appellants have alleged that the Bailiff did not deliver the possession of the suit property as there was an 'Appeal' pending. This aspect of the claim was however categorically denied by the respondent no 1 in the written objection, and it was stated that the satisfaction could not be achieved due to the resistance of the judgment debtor/appellants for which the police help was sought for under the provisions of Order 21 Rule 97 of the Code and it was allowed.

In these backdrop the application for stay dated 07.08.25 is considered by this court.

One must remember that merely by filing an appeal one cannot expect to get an order of stay in the Execution proceeding arising out of the said impugned judgment/order. It is not automatic. One must not only come with clean hands but he should be vigilant enough and he must also have sufficient reasons which are commensurate with the law for securing an order of stay of the operation of the execution proceeding. Though an appeal is a statutory right but to secure an order of stay one must portray that the stay is imperatively required in the circumstances of the case.

Now, it seems to be a peculiar claim raised by the appellants, that the Bailiff who is acting under the orders of the executing court would disregard the order of the executing court itself and return for the only reason that there is an appeal pending and moreover when there is no stay order from the Ld Court of Appeal. This contention of the appellants seems to be done in haste and is not evident on the face of the record when the copy of order passed by the Ld Executing order is seen in details.

Be that as it may.

Fact remains that the Bailiff was not able to satisfy the writ issued from the Ld Executing court as on to-date.

Now, when the provisions of Order 41 Rule 3A(3) of the CPC is seen, it is evident that there is a mandate for the appellate courts not to pass an order of stay of the execution proceedings until the Ld Appellate court is able to take up the appeal under Rule 11 onwards. The court is also mindful of the fact that the section 144 of the Code provides for restitution to the party who have suffered already in

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execution and in appeal the decree/order has been altered or set aside or reversed.

Here in this appeal it is seen that the appeal itself have not been admitted yet and the application filed under section 5 of the Indian Limitation Act is yet to be taken up and disposed of. But the circumstances existing amongst the parties is such that the execution proceeding is proceeded at a brisk pace and it should be done as so, until there is any stay order from the appropriate court. It is at the police help stage and if the same is proceeded then the same is likely to result in full satisfaction and then it is a certainty that if the present appeal is later successful, it would invariably lead to a position where the appellant would be compelled to file proceeding for restoration following the principle of "unjust enrichment" embodied in section 144 of the C.P.C. This would also result in unnecessary multiplicity which can be taken care of at this stage in this appeal itself by exercising the powers under section 151 of the Code. One must also appreciate that the provisions in Order 41 Rule 3A(3) of the CPC is a directory and is not mandatory. When the circumstances are such that, in the interest of justice such stay order is needed the courts should not blink. In this matter it is seen that the application filed u/s 5 of the Limitation Act contains grounds as "negligence of the Law Clerk" and the same has been filed on affidavit, and there is merit in the application until it is adjudicated lawfully.

Now, on perusal of the record, it is not yet clear that the notice/summons upon the other respondent is served or not as there is no process return yet. Therefore, there is every likelihood that the matter would remain pending for the service of notice upon the other respondent and in the mean while the execution proceeding would be nurtured in a brisk pace to it's full satisfaction by the respondents together, else the other respondent would have appeared already. It is not expected that in a proceeding of this nature the other respondent would have no knowledge about the institution of this appeal when they were the joint pre-emptors of the suit property and the respondent no 1 have already appeared.

Thus it is a fit case to issue an ad-interim order of stay of the Execution proceeding, till the application for condonation of delay in filing the appeal, is taken up and disposed of, else there is every likelihood of substantial loss to the appellants which may also lead to multiplicity of proceedings.

*Hence, it is*

**ORDERED,**

*that, the Other Execution Case No 03-25 pending before the Ld Civil Judge(Jnr Div) 2<sup>nd</sup> Court at Contai be stayed till further orders, and until the application filed u/s 5 of the Limitation Act in this appeal is taken up and disposed of.*

*The appellants are directed to take steps for the service of notice/summons upon the respondent no 2 and file requisites at once.*

Fix, **date (06.11.25)** for further orders and for compliance.

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Inform the Ld Executing Court dealing with the *Other Execution Case No 03-25 pending before the Ld Civil Judge (Jnr Div) 2<sup>nd</sup> Court at Contai*, for information and necessary action, if any.

Upload the order in the CIS. Update the cause list and court diary.

D/C by me,

Addl. District Judge, 2<sup>nd</sup> Court,  
Contai, Purba Medinipur

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Contai, Purba Medinipur