Title Appeal No.44 of 2025

Order No.09 dated 12.12.2025

Today is fixed for hearing application u/o 41 Rule 5 read with Section 151 CPC filed by appellant Rabi Roy praying for stay of execution of impugned judgement and order deliverd on 23.04.2025 in connection with T.S No.333 of 2022 as passed by Ld. Civil Judge (Jr. Divn.), 2nd Court, Serampore, Hooghly and decree following the same.

Ld. Lawyer for appellant Rabi Roy is present as well as Ld. Lawyer for respondent No.2 Fakir Som and Ld. Lawyer for respondent No.1 Sufal Chandra Som.

Heard both sides.

Perused materials available on record which are only certified copies of judgedment and order dated 23.04.2025 passed in T.S 333 of 2022 and decree drawn up following the same.

Perused the objections submitted to the stay petition.

Having heard both sides and considering materials on record, prima facie it appears to this Court that **Order 41 Rule 5 CPC** clearly provides that an appeal shall not operate as a stay of proceedings under a decree or order appeal from except so far as the appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from decree; but the appellate Court may **for sufficient cause** order stay of execution of such decree.

At this stage before this Appellate Court only the certified copy of judgement, order and decree are available. An appeal is a continuation of suit and first appeal is of right. Appellate forum is to preserve and protect the rights of appellant and also to protect the respondent from probable loss fruits of the order passed in his favour.

Hence, this Court is of considered view that an interim order of stay of execution of the impugned judgement and order dated 23.04.2025 and the decree following the same, be stayed till date fixed, on payment of occupational charges of Rs.10,000/- per month to the respondent No.1 Sufal Chandra Som by 10th day of next succeeding months from the date of passing of this order in his Bank Account.

Respondent No-1 is hereby directed to provide his Bank Account No. to the appellant with intimation to this Court.

Call for Trial Court Record and further hearing.

To date 05.01.2026.

Dic. & Corr. by me

Additional District Judge
FTC, Serampore, Hooghly.

Additional District Judge
Fast Track Court, Serampore, Hooghly.