

Misc. Case No. 41 of 2025
CNR No. WBHW01-000891-2025
Present: Dr. Debasree Lahiri
District Judge In Ch., Howrah.
J.O. Code - WB00952.

Order No. 06 dated 05.03.2026.

The record is put up today on the basis of a put up petition to move the application for stay filed today on behalf of the petitioner along with a fresh power.

On the prayer of the learned Advocate appearing on behalf of the petitioner, the application under Section 151 of the C.P.C. praying for stay of further proceeding of Title Execution Case No. 112 of 2024 pending in the Court of learned Civil Judge (Junior Division), 1st Court, Howrah, is taken up for hearing.

Learned Advocate for the petitioner submits before this Court that the instant Misc. Case has been filed under Order IX Rule 4 read with Section 151 of the C.P.C. praying for restoration of Title Appeal No. 152 of 2023 which was dismissed for default for non-taking of steps by the then conducting Advocate and the opposite parties have filed the Title Execution Case No. 112 of 2024 for executing the judgement and decree dated 27.09.2023 passed in Title Suit No. 80/2011 and the next date is fixed on 06.03.2026 for payment of police cost by the decree-holders/landlords. Learned Advocate has further submitted that the said judgement and decree was passed in respect of wrong Municipal Holding being No. 281/5/A, G.T. Road, P.S. Bally now Belur instead of actual Holding No. 281/5A, G.T. Road and the agreement for tenancy was executed in between the petitioner and his landlord Vinod Kumar Singh also in respect of 281/5A, G.T. Road. It is further submitted that the instant Title Suit being No. 80/2011 was filed by the mother of opposite parties in respect of 281/5/A, G.T. Road viz. Deomati Singh but the actual landlord was Vinod Kumar Singh and the letter of eviction (Ext. 6 series) under Sec. 6(4) of WBPT Act was also not correctly sent to the petitioner/JDR as no schedule was given in the said letter. So, it is prayed that the further proceeding of the said execution case may be stayed. In support of her submission, learned Advocate for the petitioner has cited two decisions as reported in:

1) Basant Lal And Anr. vs. Lakshmi Chand AIR 2007 Allahabad 32 wherein it has been held that *even if the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure are held to be not*

applicable because there is no Second Appeal pending at present, still the Court has ample to pass appropriate orders for injunction or stay in exercise of its inherent powers saved under Section 151 of the Code of Civil Procedure. Section 151 of the Code of Civil Procedure lays down that nothing in the Code of Civil Procedure shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Therefore, the Court is not powerless in granting suitable orders for injunction or stay during the pendency of the restoration matter or the substitution matter merely on the ground that the Second Appeal has already abated and there is no Second Appeal pending at present.

2) Mukesh Kumar Petitioner v. Mamta Bai Madhya Pradesh High Court Jan 29,2019 wherein it has been observed that where an application is made for setting aside a decree under Order 9, Rule 13 in the absence of any specific provision, section 151, Civil Procedure Code is applicable for staying its execution. The Court below had jurisdiction to entertain the application for stay under Section 151. The question whether stay should be granted or not would be within the discretion of the Court below after the application under Section 151 is entertained.

Heard. Perused the documents including the judgement and decree.

On perusal of the entire materials on record and the documents placed before the Court, it appears that there are gross anomalies in the said judgement and decree and if an order of stay is not passed, the petitioner shall suffer irreparable loss and injury. Considering such circumstances, the prayer for stay of all further proceeding of Title Execution Case No. 112 of 2024 is allowed for a limited period.

Hence, it is

Ordered

that all further proceeding of Title Execution Case No. 112 of 2024 is hereby stayed till 02.04.2026.

To date.

Dictated & corrected by me.

D. J. In Ch.

District Judge In Charge, Howrah