

EJ. EXECUTION CASE NO. 60 OF 2024
C. N. R. NO. WBPS01-000247-2024
Before Sri M. N. Ghosh, Ld. Judge, 2nd Bench.

ORDER NO. 09 DATED 08.08.2024

Ld. P.O. has been transferred.

Today is fixed for further hearing of the petition filed by the Judgment debtors on 31.07.2024.

Both parties have filed haziras through their respective ld. Advocates.

Ld. Advocates for both sides are present.

The record is taken up for further hearing of the petition filed by the judgment debtors on 31.07.2024.

Heard ld. Advocates for both sides.

Perused the petition and the materials on record.

It is submitted by the ld. Advocate for the judgment debtors that they are contesting the instant Execution Case and also filed an Appeal against the decree which has been registered as T.A. No.21 of 2024 before the Ld. Chief Judge, City Civil Court, Calcutta and the same is listed for admission hearing. That as the Appeal has not been admitted, the Appellants cannot move the stay application there and as such prayed for a limited stay order against all further proceedings in the instant Execution case.

On the other hand, by filing written objection, it is submitted by the ld. Advocate for the decreeholder that the judgment debtors have no cause of action to file the instant petition. The judgment debtors cannot move any application for stay in this Executing Court and if the prayer for stay is allowed, the decreeholder will suffer irreparable loss and injury and as such, their instant application may be rejected with cost.

Considering the petition, written objection, submissions of ld. Advocates for both sides and the materials on record, it appears that though the judgment debtors have filed Title Appeal No.21 of 2004 but there is no stay from the Appellate Court. So, mere filing of an Appeal does not automatically operate as stay of proceedings under a decree. Moreover, as per provision of Or.XLI R.5 (1) of C.P.C., it is the settled principle of law that **“An Appeal shall not operate as a stay of proceedings under a decree or order appealable 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 the decree, but the Appellate Court may for sufficient cause order stay of execution of such decree”**. As per provision of Or.XLI R.5(2) of C.P.C., it is also the settled principle of law that **“Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed”**. Here in the stay application, it is admitted by the judgment debtors that they have preferred an Appeal before the Ld.Appellate Forum and when the Appeal has been preferred against the decree passed by this Court, then this Court has no jurisdiction to pass any order of stay of the execution proceeding.

ORDER NO. 09 contd.

Considering the above made observations, this Court holds that the petition for stay of execution proceeding filed by the Judgment debtors should not be allowed and the same will be summarily rejected.

Hence, it is

ORDERED

that the petition dated 31.07.2024 filed by the judgment debtors praying for stay of all further proceedings of the instant Execution Case is rejected on contest.

To date i.e. 14.08.2024 for taking steps by the Decreeholder.

Dictated and corrected by me,

JUDGE-IN-CHARGE

JUDGE-IN-CHARGE
[5TH BENCH]
J.O. Code No. WB01229.