

Ej. Ex. Case No. 71 of 2023
arising out of Ej. Suit no. 239 of 2019
CNR No. WBPS01-000296-2023

Order No. 13

Date: 19.08.2024

Today is fixed for passing order in respect of the stay petition dated 13.08.2024.

Parties have filed their respective haziras.

The petitioner/judgment debtor by filing the above petition submits that the opp. Party being plaintiff filed Ej. Suit no. 239 of 2019 and obtained exparte decree herein by suppressing material fact regarding the service of summons upon the defendant. Subsequently, the opposite party / plaintiff being decree holder filed Ej. Ex. Case no. 71 of 2023 and filed an application Under Rule-208 of CRO for order of Police help for executing the exparte decree dated 15.12.2022 which was allowed in exparte.

It is specifically stated by the petitioner / judgment debtor that the petitioner has brought the Misc. Case U/O 9 R 13 for setting aside the exparte decree passed in Ej. Suit no. 239 of 2019, but the opposite parties are making every attempts to execute the said decree most illegally even during the pendency of the instant Misc. Case which has necessitated the instant application U/S 151 of CPC seeking order of stay of the execution proceeding under Ej. Ex. Case no. 71 of 2023 till the disposal of the said Misc. Case.

The Ld. Advocate for the decree holder raised strong objection that stating that the instant petition has been filed only to intent to delay the execution proceeding and accordingly the petitioner has prayed for rejection of the application seeking stay.

Hd. both sides.

Perused the materials on record.

Considered.

It is admitted fact that Ej. Suit No. 239 of 2019 was decreed exparte in respect of which execution proceeding under Ej. Ex. Case no. 71 of 2023 is going on. It is also admitted fact that an application u/o-9, Rule-13 of CPC being registered as Misc. Case No. 109 of 2024 has been filed by the petitioner for setting aside the exparte decree and the said case is pending.

It is settled law that if the exparte decree passed in Ej. Suit No. 239 of 2019 is being executed, the proceeding of Misc. Case No. 109 of 2024 filed u/o-9, Rule-13 of CPC would be frustrated. Accordingly, for effective proceeding / hearing of the execution proceeding being no. 71 of 2023 is required to be stayed till the disposal of the instant Misc. Case No. 109 of 2024 U/O 9 R 13 CPC.

Taking into consideration the above fact, this Court has already passed an order of stay subject to payment of occupational charge to be paid by the judgment debtor to the decree holder to the tune of Rs. 3,000/- per month from the date of the decree and the judgment debtor has been directed to comply with the said order under Misc. Case No. 109 of 2024.

Accordingly, the proceeding of the execution case be stayed till the disposal of the said Misc. Case No. 109 of 2024 subject to compliance of the order passed by this Court in Misc. Case No. 109 of 2024.

Fixing 13.11.2024 for awaiting further order of Misc. Case No. 109 of 2024.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
(J.O. Code: 01148)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta