

Ej Ex 46 of 2017
WBPS01-000397-2017

Before: Smt. Glady Bomjan, Ld. Judge, 3rd Bench

Order No: 67

Date: 19-05-2025

Record is put up before me on the strength of a put up petition filed by the decree holders.

Decree holders file a petition along with photocopies of order dt. 24.09.2024 and 17.12.2024 in c/w C.O. 3415 of 2024, for recalling the order dt. 15.05.2025 on the grounds that the Hon'ble High Court had already stayed the matter till June, 2025.

In view of the above exigency, there is no need to serve the copy to the other side or hear the other side.

Instant petition is taken up for hearing.

Heard Ld. Advocates for the decree holders. Perused the petition and other materials on record.

Considered.

In the instant petition, decree holders have contended that being the plaintiffs, they had filed the Ejectment Suit 6763 of 2014 against the judgment debtors/ defendants for recovery of khas possession. On 03.09.2016 the suit was decreed ex-parte. Subsequently the decree holders have filed the instant Execution Case for recovery of khas possession. Thereafter the judgment debtors being the defendants had filed a Misc. Case under Order 9 Rule 13 for setting aside the ex-parte decree and the said Misc. Case was rejected vide order dt. 13.06.2023.

Being aggrieved by the said order, the judgment debtors have filed a Misc. Appeal being No. 27 of 2023 before the Ld. Chief Judge, City Civil Court, Calcutta and vide order dt. 11.06.2024 Ld. Appellate Court has been pleased to allow the said Appeal. Subsequently, the decree holders preferred a revisional application before the Hon'ble High Court, Calcutta being no C.O. No. 3415 of

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Order No: 67 contd.....

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2024 wherein Hon'ble Court has been pleased to pass an interim order of stay of the operation of Miscellaneous Appeal No. 27 of 2023 till the end of the June, 2025. But on 15.05.2025 this Court had passed an order of dismissal of the instant Execution Case, therefore, the decree holders have filed the instant petition for recalling the order dt. 15.05.2025 passed by this Court.

On careful perusal of the record it appears that the instant Execution Case was dropped by this Court vide order no 65 dt. 15.05.2025 as the Ld. Appellate Court had allowed the Misc. Appeal. On perusal of the order of the Hon'ble High Court, Calcutta dt. 17.12.2024 in c/w C.O. 3415 of 2024 wherein, Hon'ble Court has been pleased order as follows:

"3. Having heard the learned advocates appear for the respective parties and considering the fact that the interim order passed on 24th September 2024 is valid till the end of December 2024, I am of the view that the interim order should be extended till the end of June 2025 or until further orders of this Court, which ever is earlier."

Record further reveals that no such official communication has been received from the Hon'ble High Court, Calcutta. On earlier occasions, the said order of the Hon'ble High Court has not been filed or brought to the notice of the Court in any manner by either of the parties in the instant Execution Case. Decree holders being the plaintiffs have filed the copies of the said orders of the Hon'ble High court, Calcutta in the original Ejectment Suit 6763 of 2014 only on 03.03.2025. As such, this Court passed an order of the dismissal of the instant Execution Case though the judgment debtors having contesting the C.O. 3415 of 2024 can not be said to be unaware of such order of stay.

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Considering the aforesaid facts and circumstances and perusal of the order of the Hon'ble High Court, Calcutta, this Court is of the view that order dt. 15.05.2025 requires to be recalled in terms of the provision of the Section 152 of the C.P.C. to remove the aforesaid error. Instant petition is supported by an affidavit.

Hence, it is

Ordered

that the petition filed by the decree holders dt. 19.05.2024 is hereby allowed.

Order no 65 dt. 15.05.2025 passed by this Court is hereby recalled.

Execution Case being no 46 of 2017 is hereby restored to its original file and number.

Note in the register restore the case in CIS server also.

BC-I to do the needful. Inform the Ld. Advocate for the judgment debtors as well.

Fix **11-07-2025** for awaiting further order from the Hon'ble High Court, Calcutta.

Smt. Glady Bomjan
[J.O. Code: WB1039]
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta