

Misc. Case 110 of 2018

WBPS01-000528-2018

[under Order 21 Rule 97 of the C.P.C. r/w 208 of C.R.O.]

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

Order No: 64

Date: 15-05-2025

Today is fixed for hearing of the petition filed by the opposite party dt. 04.09.2024. W/o if any, in the mean time.

Petitioner files hazira.

Opposite party files hazira.

Instant petition is taken up for hearing.

Heard Ld. Advocates for both sides. Perused the petition and materials on record.

Considered.

In the instant petition, opposite party / judgment debtor has contended that since the decree passed in the Ejectment Suit 6763 of 2014 has already been set aside of by the Ld. Appellate Court, the instant Misc. Case is not maintainable and prays for dismissal of the same.

Record reveals that the instant Misc. Case arose out of Ejectment Execution Case 46 of 2017 which was filed for execution of ex-parte decree passed in the Ejectment Suit 6763 of 2014. Being aggrieved by the ex-parte decree passed by the then Ld. Predecessor-in-office, opposite party/defendant had filed a Misc. Case under Order 9 Rule 13 of C.P.C. for setting aside the ex-parte decree and the said Misc. Case has already been rejected by the Ld. predecessor-in-office. Being aggrieved by the said order, opposite party / defendant had preferred an appeal before the Ld. Appellate Court being no Misc. Appeal 27 of 2023. Vide order dt. 05.06.2024, Ld. Chief Judge, City Civil Court, Calcutta has been pleased to pass an order to set aside the ex-parte decree passed in the Ejectment Suit 6763 of 2014 and remand back the same for further hearing.

Considering the above facts and circumstance, this Court is of the

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view that since, the decree of the Ejectment Suit 6763 of 2014 has already been set aside, the instant Misc. Case for police help at the time of execution of decree has become infructuous and liable to be rejected.

Hence, it is

Ordered

that the petition filed by the opposite party dt. 04.09.2024 is hereby allowed and the Misc. Case being no 110 of 2018 is rejected .

Smt. Glady Bomjan

[J.O. Code: WB1039]

Judge, 3rd Bench

**Presidency Small Cause Court,
Calcutta**