

Misc Case 74 OF 2022
Arising out of TITLE SUIT- 346/2006

Order dt.
02.04.2024

Today is fixed for passing order in respect of petition for stay of Title Execution 06 of 2022 filed by the petitioner. The petitioner has filed this Misc Case u/o 9 rule 13 of the CPC for setting aside the ex-parte decree passed against him on 25.07.2016 in T/S suit being no. 346/2006.

Petitioner in his application of stay stated that he had engaged one senior advocate namely Nirmal Banerjee as their advocate to contest the suit. The petitioner/defendant used to contact with the Ld advocate in his chamber at Tangra and used to get information about the suit. The defendant fully depended upon the said advocate and the Ld advocate assured that the defendants need not to worry but subsequently during pendency of the suit the Ld advocate for the petitioner passed away and there was a turmoil in the proceeding of the suit. After that the petitioner came to know from the locality that the suit proceeded ex-parte against the petitioner/defendant. The opposite party/plaintiff has managed to obtain an ex-parte decree of recovery of khas possession by evicting the defendant from the suit property. The opposite party /plaintiff has already filed Title Execution no. 6 of 22 by putting the said ex-parte decree passed in Title Suit 346 of 2000 against the petitioner by fraudulent means and by misleading this court, into execution. The opposite party is trying to execute the decree over the entire property, although the opposite party claims for decree against one room alleged to have been occupied by this petitioner. The opposite party is going to grab the entire property by showing the order of this court fraudulently achieved. The petitioner has no intentional fault or laches on his part. The two daughters of the petitioner are students and are still pursuing their education and they have nowhere to go and if the execution is proceeded in this manner, they will be left shelter less and have to suffer terribly. At this stage the petitioner prays for stay of all further proceedings of Title Execution no. 06 of 2022 till the disposal of the Misc Case.

Ld advocate on behalf of petitioner refers two decisions passed in :
Manindra Nath Dey versus Panna Devi Agarwal 1992(2) Cal 504 and
Abdul Ahad Baba V/S Ghulam Mohd. Dar and others AIR 1967 Jammu and Kashmir 75.

In the written objection the Opposite party submits that the instant stay application is harassing, motivated and concocted and it is also barred by principle of resjudicata and suppression

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of material facts. It is pertinent to mention here that already the petitioner had filed one petition for stay of all further proceeding of the execution case and the same petition has been heard on 29.09.2022 and ordered on 29.09.2022 and this court has rejected the aforesaid application for staying all further proceeding of the execution case. The petitioner again filed the instant petition with self-same prayer and suppressed that the application dt. 29.09.22 had been already rejected once but against this order the petitioner did not file any revisional application before this Hon'able High Court at Calcutta. After a lapse of more than one year this petitioner again filed this instant application for stay. The allegations contained in paragraphs 1,2 and 3 of the instant application for stay are strongly denied. It is nothing but a cock and bull story that the petitioner engaged one senior advocate and fully dependant upon the same advocate. The petitioner has all the knowledge regarding the proceeding of the Title Suit and just to harass and to linger the proceeding has filed this instant Misc Case. The petitioner with his malafide intention did not take any step in the Title Suit and ultimately the suit was decreed exparte. It is also to be mentioned here that even after the death of the learned advocate, the petitioner did not contact with any other advocate nor appointed any advocate to contest the Title suit. It is just a false and frivolous statement of the petitioner that the petitioner has come to know from the locality. The petitioner has not given any explanation regarding the non-taking of steps after the death of the said Advocate. Apart from that, the petitioner deliberately refused to appear in the execution case even after making illegal resistance against taking the khas possession of the decreetal property and the reason shown by the petitioner in his stay petition are blatant lie and not at all satisfactory and at this stage the instant application for stay may be rejected with exemplary cost.

Ld advocate on behalf of Opposite Party refers two citations:

Arjun Singh versus Mohindra Kumar 1964 AIR (SC) 993 and

Ram Bilas V/S Board of Revenue (Rajasthan) 2000(4) Civil Law Journal 566.

Heard Ld Advocate on behalf of both parties.

On careful perusal of the case record it appears that the suit was filed in the year 2006 and the service in both ways has returned and there after on the next date the petitioner appeared before this court by filing vakalatnama along with a prayer for time to file written statement. On 24.04.2007 defendant filed petition U/O 11 R 10 read with order 7 R 14 of CPC and till 13.09.2013 contested the suit but after that the petitioner did not participate in the court proceeding and the suit proceeded exparte against the petitioner/ defendant on 02.07.2014 and on 25.07.2016 the suit was decreed exparte. Subsequently the O.P/ plaintiff filed the execution proceeding in the year 2022. As per the report of the court bailiff due to obstruction by the petitioner/Judgement Debtor the decree could not be executed and

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accordingly the O.P/Decree Holder filed one petition U/O 208 CRO for police help and the evidence of the decree holder was completed. In the mean time petitioner/Judgement Debtor appeared in the execution case as well as filed the instant Misc Case.

At this juncture this court is of view that the instant Misc Case U/O 9 Rule 13 of CPC has not initiated within the statutory period under article 123 of the Limitation Act, since petitioner/defendant appeared in the suit on 28.11.2006 and due to non taking of step the case was heard exparte against petitioner/defendant on 02.07.2014 and on 25.07.2016 the suit was decreed exparte. In this case the Misc Case should have been filed within 30 days from the date of the decree but this Misc Case has been filed after lapse of more than six years and no petition in support of limitation has been filed. So the prima-facia of the above Misc Case has not been admitted at this stage and the stay petition filed by the petitioner for staying the Title Execution case is barred by the limitation and can not be allowed too.

Hence it is,

O R D E R E D

that, the stay petition filed by these petitioner/Judgement Debtor is hereby rejected.

To 22.04.2024 for hearing of Misc case.

D/c by me.

CJ(JD) 2nd Court
Sealdah.