

Misc. Appeal No. 25 of 2023
CIS No. 25/2023
CNR No. WBSP07-001427-2023

Order No. 15 dated 12.09.2025

The appellants and the respondent are present by filing respective haziras through their Ld Advocates.

Today is fixed for hearing of petition U/s 151 of the Code of Civil Procedure dated 06.09.2025 filed by the appellants praying for passing of stay of the operation of the order dated 28.08.2014 passed by Ld Civil Judge (Jr. Div.), 1st Court, Sealdah in T.S. No.39/2013 and also for stay of further proceedings of T.Ex. Case No. 8/2014 pending before the said Court.

It is alleged by the appellants that this Misc. Appeal was preferred against the order dated 18.03.2023 passed by Ld Civil Judge (Jr. Div.), 1st Court, Sealdah in Misc. Case No. 23/2016 which arose out of T.S. No.39/2013. It is alleged further that the original Title Suit No.39/2013 was decreed ex-parte. The decree holder instituted an execution case being Execution Case No. 8/2014 and the Ld Trial Judge by his order dated 19.07.2025 allowed the application of the respondent and also permitted to take assistance of police at the time of recovery of possession of the suit property by way of execution of decree. It is alleged again that if the decree is executed during the pendency of this Misc. Appeal, the appellants will suffer irreparable loss.

The respondent contested the petition by filing written objection denying all the material allegations made in the petition. It is contended that since the suit has been decreed ex-parte on 28.08.2014, the appellants became unauthorized occupier of the suit property. The execution case was filed being Execution Case No.8/2014 by the decree holder before the Ld Trial Court. Ld Trial Court issued writ of possession on 23.03.2015 directing the Court bailiff to execute the decree. The Appellants/JDRs vehemently resisted the Court bailiff to execute the decree and as such the bailiff returned the writ of possession since he could not execute the decree. The Respondent/DHR was compelled to file application under Rule 208 CRO seeking for police help to the bailiff at the time of execution of writ of possession. It is further contended that in that stage, the appellants filed Misc. Case. 23/2016 U/o 9 Rule 13 CPC for setting aside the ex-parte decree along with an application U/s 5 of Limitation Act. The appellants did not file any application to stay of execution in that Misc. Case. I Ld. Trial Judge rejected the application U/s 5 of Limitation Act and consequently, the Misc. Case was also dismissed. It is next contended that in the year 2023 this Misc. Appeal has been preferred by the appellants when the application for police help was proceeded. The appellants did not file any application for stay in this Appeal. The Ld Trial Court granted police help on 19.07.2025 and directed the respondent/decree holder to deposit the cost. The respondent/DHR accordingly deposited cost of Rs.25,560/- on 11.09.2025. The appellants after a lapse of two years and half from the date of filing of Misc. Appeal intentionally filed this application for stay knowing well that the decree was passed in the year 2014. In view of that it is prayed that if the order of stay of execution is granted at this stage then the appellants may be directed to pay occupation charges of Rs.40000/- per month from the date of decree till the

disposal of the appeal.

I have carefully considered the petition and the written objection which are supported by affidavits. I find that the decree was passed by Ld Civil Judge (Jr. Div.), 1st Court, Sealdah in the year 2014. The Execution Case was filed by the Respondent/DHR in 2014 being Title Execution Case No.8/2014. The Appellants/JDRs filed the application for setting aside the ex-parte order with an application U/s 5 of Limitation Act before the Ld Trial judge in the year 2016 and that was registered as Misc. Case No. 23/2016. Ld Trial Judge was not convinced about the delay in instituting the Misc. Case and he dismissed the petition for condonation of delay and consequently, the Misc. Case was also dismissed. Against that order, Misc. Appeal has been preferred wherein the appellants did not file any application of stay of execution of decree. Now after a lapse of about 11years on 06.09.2025 suddenly an application for stay is filed by the appellants/judgement debtors before this Court when the writ for delivery of possession has already been issued by Ld. Trial Judge and the cost of police help has been deposited by the respondent/decree holder.

It is felt that the appellants/judgement debtors were observing the process of the execution case and as soon the date was fixed to deposit the cost of police help by Ld Trial Judge, the appellants/JDRs appeared before this Court so that the decree cannot be executed. I am unable to understand, why the appellants did not file any stay application along with filing of this Misc. Appeal. I am of the opinion that only to harass the respondent *DHR*, *this stay application has been filed before this Court by the appellants/JDRs*. I therefore do not find any just and convincing reason to pass any order of stay of Title Execution Case No.8/2014.

It is accordingly,

ORDERED

that the application for stay dated 06.09.2025 filed by the applicants is rejected on contest.

I make no order as to cost.

Fixing **17.01.2026** for hearing of Misc. Appeal

D/Corrected by me

Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.

Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.
(J.O. Code No. WB00656)