

In the 1st Court of Ld. Additional District Judge, Sealdah

Title Appeal No. 39 of 2025

Order no. 11 dated 25.09.2025

The case record is taken up for passing order in respect of the petition of stay of operation of the impugned order filed by the appellant and the petition challenging the maintainability of the instant appeal.

The petition for maintainability is taken up at the very outset.

According to the submission of the Ld. Counsel for the respondent this appeal should not come within the purview of order 41 Rule 1 CPC as the same arose from a Misc case.

The Ld. Advocate for the appellant submitted that the effect of the impugned order passed under Order 21 Rule 97 to 103 should be considered as a decree and for that ground this title appeal is maintainable under 41 Rule 1 CPC as the effect of impugned order will be treated as decree.

Upon consideration of submission of both sides and on reading of Order 21 Rule 103 CPC it appears that where any application has been adjudicated upon under Order 21 Rule 98 or Rule 100, the order made thereon shall have the same force and be subjected to the same condition as to an appeal or otherwise, as if it were a decree.

I also want to rely upon a decision of the Hon'ble Apex Court as reported in 2014 AIR SCW 6552 (*Sameer Singh Vs. Abdul Rab*). In the said decision the Hon'ble Court also opined that when an application is adjudicated upon under Rule 98 or Rule 100 the said order should be considered as a decree.

On the basis of the said discussion the petition challenging the maintainability of the appeal has no role to play and the same stands rejected.

The petition for stay of operation of the impugned order is taken up for consideration.

I have gone through the said order and also the prayer portion of the Misc case no. 15 of 2023 as found in the TCR.

The said Misc case was an application under Order 21 Rule 97 to 103 CPC whereby prayer was made for setting aside the judgment and decree dated 22.08.2017 passed in TS No. 46 of 2009 and an order for rejection of Title execution case No. 103 of 2018 on the ground that the decree was obtained by practicing fraud.

I have considered the entire TCR along with the impugned Title Execution case and the decree which was challenged.

I have also considered the impugned order by which the Ld. Trial Judge has been pleased to reject the petition as it was held by the Ld.

Trial Judge that the said court did not find any merit in the original application and the Ld. Court has been pleased to allow the application of the OP No. 1 regarding the maintainability of the said Misc case and the case was disposed of.

On scrutiny of the impugned order it appears to me that the said order was a very cryptic one and so many points were not discussed.

In my view, if at this stage, the operation of the impugned order be not stayed, the interest of the parties may be adversely affected.

Under the circumstances, let the operation of the impugned order dated 05.07.2025 passed by the Ld. Civil Judge (Jr. Divn) 1st Court, Sealdah in Misc case No. 15 of 2023 be stayed till disposal of the instant Title appeal.

As TCR has already been received, fix **12.11.2025** for hearing of the appeal.

D/C by

(Anirban Das)/ WB00691,
Additional District Judge,
1st Court Sealdah

(Anirban Das)/ WB00691,
Additional District Judge,
1st Court, Sealdah