

CO/1973/2025

**INDIAN OIL CORPORATION
LIMITED AND ORS.
VS
SHYAMAL KRISHNA BISWAS @
SHYAMAL KR. BISWAS AND ORS.**

Mr. Amit Kumar Nag, Advocate
Mr. Partha Banerjee, Advocate
Ms. Tapashya Bhattacharya, Advocate
Ms. Rishita Sarkar, Advocate
... .. For the Petitioners

Mr. Sibnath Ganguly, Advocate
Mr. Argha Banerjee, Advocate
... ..For the Opposite Parties

1. Petitioners are aggrieved by an order dated May 17, 2025 passed by the learned Civil Judge (Senior Division), Sealdah in Title Execution Case No. 16 of 2023 thereby refusing to stay the execution proceedings launched by the opposite parties herein for execution of a decree passed in Title Suit No. 30 of 2007.
2. Title Suit No. 30 of 2007 had been instituted by the opposite parties for eviction of the petitioners herein inter alia on the ground of termination of lease by efflux of time. The same was decreed on February 10, 2016.
3. Assailing the judgment and decree dated February 10, 2016, the petitioners filed an appeal being Title

Appeal No. 5 of 2017 before the Learned Additional District Judge, Fast Track Court-II, Sealdah. The said appeal was dismissed for default on May 29, 2019. Seeking restoration thereof Misc. Case No. 18 of 2019 was filed by the petitioners along with an application under Section 5 of the Limitation Act, 1963 praying for condonation of delay in filing restoration of the said appeal. In the said appeal, while the application for condonation of delay was pending consideration, the learned Additional District Judge, Fast Track Court, Sealdah passed an order dated June 25, 2024 thereby staying the execution case on condition that the petitioners would go on depositing a sum of Rs.1,00,000/- per month towards occupational charges of the suit premises from the date of the decree.

4. Assailing the said order dated June 25, 2024, the petitioners approached this Court by filing CO 2449 of 2024. The said revisional application being CO 2449 of 2024 was disposed of by an order dated March 12, 2025 thereby setting aside the order dated June 25, 2024 with a request to the learned Appellate Court to dispose of the application under Section 5 of the Limitation Act, 1963 filed by the petitioners seeking condonation of delay in

preferring Misc. Case No. 18 of 2019 as early as possible.

5. While passing the said order, this Court observed that the "learned Judge ought not to have taken up the stay application prior to restoration of appeal to its own file after considering the condonation of delay. On this score only, the order passed by the learned Judge stands set aside."
6. It is submitted by the parties that the said application under Section 5 of the Limitation Act, 1963 is still pending consideration before the learned Appellate Court. Since the execution case was proceeding, the petitioners approached the Executing Court with an application under Order 21 Rule 26 of the Code of Civil Procedure and prayed for stay of the execution proceeding. The said application was rejected by the learned Executing Court observing as follows :-

"I have gone through the materials on record. On perusal of the order dated 12.03.2025 passed by the Hon'ble High Court, Calcutta, in C.O. no.2449 of 2024, it appears to me that the order of stay granted by the Ld. ADJ, FTC 2 Court, Sealdah in Misc Case No. 18 of 2019 has been set aside by the Hon'ble High Court, Calcutta. It also appears that the JDRs have also filed the copy of this order along

with this petition. As the order of stay of all further proceedings of this execution case passed by the Ld. Appellate Court in Misc Case No. 18 of 2019 has been set aside by the Hon'ble High Court, Calcutta, this Court has no power to grant any further stay of further proceedings of this execution case. Accordingly, I do not find any merit in this petition."

7. In fact the observation made by this Court while disposing of CO 2645 of 2024 clearly stood in the way of treating the appeal as pending and therefore there was no reason for the executing Court to stay the execution proceedings. Further although the provisions of Order 21 Rule 26 are invoked in cases where a decree is sent by the Court passing the same to another Court for execution, even if the said aspect is ignored and the same is treated as applicable to the facts of the present case, no cause far less sufficient cause as required by the said provision has been shown in the said application requesting for stay of execution.
8. The order dated May 17, 2025 therefore does not appear to be suffering from any illegality or material irregularity warranting interference by this Court under Article 227 of the Constitution of India.

9. It has been brought to the notice of the Court that by an order dated July 23, 2025 passed in CO 2645 of 2025, the learned Additional District Judge, Fast Track Court No. II at Sealdah had been requested to take up the hearing of the application under Section 5 of the Limitation Act, 1963 on the next date fixed, if the same was otherwise ready for hearing and to make an endeavour to dispose of the same as expeditiously as possible without granting unnecessary adjournments to either of the parties. Since such order had already been passed by this Court, there is no scope for passing any further order for expeditious disposal of the said appeal. It is expected that the learned Additional District Judge, Fast Track Court No. II at Sealdah will take all steps to carry out the request made by this Court by its order dated July 23, 2025.
- 10.CO/1973/2025 is therefore dismissed without any order as to costs.

(Om Narayan Rai, J.)