

JPD-5  
Ct No.07  
18.06.2026  
(SSS)

Calcutta High Court  
In The Circuit Bench at Jalpaiguri  
Appellate Side

CO 84 of 2026

Smt. Shrabani Dam @ Srabani Dam  
Vs.  
Sri Mukul Dutta and Anr.

Mr. Bapi Sarkar,  
Mr. Chayan Moni Bhowal,  
Mr. Roumyadip Saha

.... for the petitioner.

Ms. Kakali Bose,  
Ms. Neha Sahani

....for the opposite parties.

1. The present challenge has been preferred against an order whereby the judgment debtor/petitioner's application for stay of the execution case in connection with an *ex parte* decree passed against the petitioner was dismissed.
2. Learned counsel for the petitioner submits that the stay application was filed in connection with an application for restoration of the suit under Order IX Rule 13 of the Code of Civil Procedure, which is still pending. It is submitted that a *prima facie* case for hearing the said restoration application on merits have been made out, to the effect that summons was not duly served on the petitioner. The process server served the summons apparently by hanging on the door of the premises in question. Such service was apparently identified

by a person who resides at least 10 to 15 kms away from the suit premises and as such, it is in doubt as to whether proper identification could be made by such a person.

3. From the impugned order, it transpires that the learned Executing Court proceeded on the premise that the application was not maintainable under Order XXI Rule 29 of the Code of Civil Procedure, although it is well settled that it is the substance of the application which is to be seen and not the caption. However, the learned Trial Judge, despite observing that the provision of Section 151 could be invoked, refused to do the same, since in the opinion of the learned Executing Court, it would override or bypass an express provision in the Code of Civil Procedure enumerating that execution must proceed unless legally stayed. However, such approach is *prima facie* contrary to law, since the filing of an application under Order IX Rule 13 of the Code of Civil Procedure entitles the petitioner therein to seek stay of the connected execution case.
4. At least till the disposal of the application under Order IX Rule 13 of the Code of Civil Procedure, the further proceedings of the execution case ought to have been stayed.
5. Thus, the revisional application is required to be heard on the above questions.

6. Since Ms. Kakali Bose, learned Advocate, submits before the Court that she has instruction to appear through her learned junior on behalf of the decree holders/opposite parties, the petitioner is directed to serve a copy of the revisional application on Ms. Bose, through her junior, which will be deemed to be good service on the opposite parties.
7. However, as no caveat was lodged, there is no impediment in granting interim protection to the petitioner. Accordingly, there shall be stay of all further proceedings in Title Execution Case No. 16 of 2025 pending before the learned Civil Judge (Senior Division) at Siliguri in Title (Execution) Case no. 16 of 2025 till August 31, 2026 or until further order, whichever is earlier.
8. The matter shall be listed for hearing before the next Circuit.
9. It is made clear that since no affidavits are invited, it is deemed that none of the allegations made in the revisional application are admitted by the opposite parties.
10. The Court also records the objection taken by learned counsel having instruction to appear for the opposite parties regarding the allegation that summons was not properly served on the petitioner.

(Sabyasachi Bhattacharyya, J.)