IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 1320 of 2026

Sri Biplab Kishore Chowdhury

Vs.

Smt. Amita Bachhawat

For the petitioner	:	Mr. Saptansu Basu, Sr. Adv. Mr. Ayan Banerjee, Adv. Ms. Debasree Dhamali, Adv. Ms. Riya Ghosh, Adv.
For the opposite party	:	Mr. Rabindranath Mahato, Adv. Mr. Aritra Shankar Ray, Adv.
Heard on	:	05.10.2026
Judgment on	:	15.10.2026

Md. Shabbar Rashidi, J.:-

1. The instant revisional application is in assailment of Order No. 32 dated February 20, 2026 and Order No. 36 dated April 2, 2026 passed in O. Ex. No. 08 of 2018 arising out of O. Suit No. 203 of 2010.

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2. By the impugned order, the learned Executing Court rejected the applications filed on behalf of the present petitioner seeking stay of the execution proceeding.

3. It is submitted by learned Senior Advocate for the petitioner that previously the present petitioner brought a title suit against the opposite being Other Suit No. 151 of 2007 seeking for declaration of his tendency right in respect of the suit property. Such suit was dismissed for non-prosecution. Subsequently, the opposite party filed Title Suit No. 146 of 2010 for declaration of her title over RS Plot No. 1062. The opposite party had also filed Other Suit No. 203 of 2010 praying for eviction of the petitioner from the suit properties i.e. Plot No. 1062. Learned Senior Advocate for the petitioner submitted that by filing a suit for declaration of her title over the suit properties being Title Suit 146 of 2010, the opposite party has clouded her own right and title over the suit properties.

4. Learned Senior Advocate for the petitioner further submitted that the learned Executing Court erred in refusing stay of the execution proceeding despite pendency of an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short, 'the Code') and a Misc. Case under Section 47 of the Code, both filed by the present petitioner. Learned Senior Advocate submitted that it is well settled that where an

application for setting aside ex parte decree is made, the Executing Court should stay its act in accordance with the provisions laid down under Order XXI Rule 26 of the Code.

5. Learned Senior Advocate for the petitioner also submitted that in the application under Section 47 of the Code, serious disputes regarding executability of the decree has been raised. The petitioner had also produced Government notifications of the *Khasmahal* Department notifying the occupants of *Khasmahal* land to be treated as raiyats of such land on regularization of their occupation. He submits that the petitioner was an occupant of *Khasmahal* land and his occupation has been regularized by such notification. The name of the petitioner has been duly recorded as a raiyat in the record of rights. According to learned Senior Advocate, subsequent acquisition of title is a valid defence available in an application under Section 47 of the Code.

6. Learned Senior Advocate for the petitioner also submitted that there is an order of maintaining status quo in respect of the suit properties passed by learned Additional District Judge and affirmed by this Court. The petitioner cannot be dispossessed from the suit properties in view of the order granting status quo. In support of his contentions, learned Senior Advocate relied upon ***1992 Supp (2) SCC 623 (Ramesh Kumar v. Kesho Ram)***.

7. Learned Senior Advocate for the petitioner further submitted that rejection of an application under Section 7(2) of West Bengal Premises Tenancy Act cannot operate as res judicata in view of the fact that Government notification declaring the petitioner to be a raiyat in respect of the suit property was issued subsequently.

8. On the other hand, learned Advocate appearing for the opposite party submits that entries in record of right cannot be treated as a document of title. It is a mere document of possession. On the basis of such document, the petitioner was not entitled for an order of stay. He submits that the learned Executing Court rightly rejected the application for stay of the execution proceeding filed on behalf of the petitioner. To such proposition, learned Advocate for the opposite party relied upon ***(1996) 6 SCC 223 [Sawarni (Smt) vs. Inder Kaur (Smt) And Others]***. Learned Advocate for the opposite party also contended that the learned Additional District Judge passed an order to maintain status quo in Misc. Appeal No. 52A of 2011. Such order was affirmed by this Court in C.O. No. 4156 of 2018. In the teeth of such order directing maintenance of status quo in respect of the suit properties, the State authorities were not authorized to create third party interest in the suit properties. He also submits that the record of right showing the petitioner as a raiyat in respect of the suit property was prepared and published inspite of order

to maintain status quo. Therefore, such interest could not have been created in respect of the suit properties. In support of his contention, learned Advocate for the opposite party relied upon ***(2013) 14 SCC 689 [Jehal Tanti And Others vs. Nageshwar Singh (dead) through LRS.]***.

9. As noted above, the opposite party/plaintiff filed O. Suit No. 203 of 2010 praying interalia for eviction upon delivery of khass possession as against the present petitioner/defendant in the suit, from a shop room situated over R.S. Plot No. 1062 situated at Kharagpur Khas Jungle within the District of Paschim Medinipur. It was alleged in such suit that the plaintiff/opposite party purchased the suit properties from its previous owners Indrajit Singh Kalsi and Paramjit Kaur. It was also alleged that the petitioner/defendant was among the tenant under the previous owners in respect of a shop room within the suit premises. The plaint also alleged that the tenancy of the petitioner had ended with August 2, 2009. It was also alleged that the petitioner/defendant damaged the suit properties by breaking a portion of the boundary wall adjacent to the shop room and forcefully tried to take possession of a portion of the suit properties.

10. According to the case made out in the plaint, the petitioner had obtained possession certificate from Block Land and Land Reforms Officer for the purpose of obtaining a drug license in respect of the

showroom without the knowledge of the plaintiff. The petitioner also defaulted in payment of rent and the opposite party/plaintiff had terminated the tenancy of the petitioner by issuing a notice on March 25, 2010 in accordance with Section 6 (4) of the West Bengal Premises Tenancy Act, 1997 read with Section 106 of the Transfer of Property Act. The plaintiff also required the suit premises for her own use and occupation.

11. The petitioner, although, appeared in the suit through his advocate and intended to contest the same. But due to inadvertent mistakes and negligence on the part of the law clerk of the learned advocate, proper steps could not be taken in the suit on behalf of the petitioner/defendant. The suit was fixed, for ex parte hearing and by a judgement and decree dated May 6, 2014, the suit was decreed ex parte directing the petitioner/defendant to quit and vacate the suit premises.

12. It also transpires from the materials on record that the opposite party/plaintiff also filed Title Suit No. 146 of 2010 against the petitioner praying for a declaration of title over the selfsame suit properties which were the subject matter of O. Suit No. 203 of 2010. In such suit, the petitioner filed an application under Order XXXIX Rules 1 and 2 of the Code. Such application filed by the petitioner was initially dismissed by the learned trial court. The petitioner preferred an appeal against such

order and by order dated October 4, 2018, the learned first appellate court directed the parties to maintain status quo in respect of the suit properties with regard to the nature, character, possession and ownership of the suit property. Such order passed by the learned first appellate court was subsequently affirmed by the High Court in its revisional jurisdiction.

13. It is also evident that upon receiving notice of the execution proceeding in respect of the judgement and decree passed in O. Suit No. 203 of 2010, the petitioner filed an application under order IX Rule 13 of Code being J. Misc. Case No. 118 of 2018. The said J. Misc. Case is yet to be disposed of. The petitioner also filed an application under Section 47 of the Code, in the pending execution case canvassing various grounds. It was contended by the petitioner in such application under Section 47 of the Code that the suit property was declared as *Khasmahal* land under the occupation of the present petitioner and that his name was duly recorded as raiyat in respect of the suit properties in the records of rights.

14. On the ground of pendency of J. Misc. Case No. 118 of 2018 as well as application under Section 47 of the Code, the petitioner took out two consecutive applications seeking stay of further proceeding of the execution case. Both such application filed by the petitioner were refused

by learned executing court. It is in this backdrop, the present revisional application has been preferred by the petitioner/defendant.

15. It was contended by learned senior advocate for the petitioner that declaration of the suit properties as *Khasmahal* lands, belonging to the state of West Bengal and issuance of possession certificate in favour of the petitioner including a recording of the petitioner as raiyat in the records of right goes to the root of the case. Such issues raised by the petitioner/defendant in his application under Section 47 of the Code needs to be decided before executing the ex parte decree. It was also contended that the application filed by the petitioner/defendant under Order IX Rule 13 of the Code should be decided before the decree is executed.

16. By the first impugned order dated February 20, 2026, the learned executing court rejected the stay petition filed by the present petitioner on the ground that pendency of an application under Order IX Rule 13 of the Code was not a good ground to stay the execution. The 2nd impugned order dated April 2, 2026 was rejected with an observation to the effect that the executing court could not go beyond the decree. It also observed that,

> *"The present J. Dr/defendant if had been diligently proceeded with in the said OS – 203/2010, then the said suit would not have been decreed ex parte. But, it has become fanciful for the*

litigants these days to remain off the record for a long time and to wake up when the suit/case against him/her has been decreed ex parte."

17. As it transpires from the impugned orders, while passing the impugned orders, the learned executing court was of the opinion that the petitioner/defendant was not diligent in pursuing the title suit. He intentionally let the suit being fixed for ex parte hearing and when the ex parte decree was put into execution, the defendant woke up suddenly. Apparently, the learned trial court passed the impugned orders which were said to be attributable to the lack of due diligence on the part of the petitioner/defendant.

18. However, the learned executing court does not appear to have considered the case made out by the petitioner in their application under Section 47 of the Code. In such application, a case was made out on the part of the petitioner that the suit property was declared to be *Khasmahal* land belonging to the state of West Bengal and that the petitioner had obtained a possession certificate. His name was duly recorded in the records of rights in respect of the suit property as raiyat. It is also evident that due to such facts and circumstances, the opposite party/plaintiff had to file another suit for declaration of his right and title over the suit properties which were apparently clouded by the present

petitioner as well as the State authorities. The claim of the petitioner/defendant to the effect that the suit property was settled in his favour by competent authorities is required to be considered. Such case has been made out by the petitioner/defendant in his application under Section 47 of the Code. Moreover, the other suit filed by the opposite party/plaintiff seeking a declaration of his title over the suit properties involved in the subject execution proceeding, is yet to be decided.

19. Both the parties have referred an order directing maintenance of status quo in respect of the suit properties. On one hand, it was the submission of the petitioner that if the execution case continues with the execution of the ex parte decree, it would be in violation of the order of status quo passed in a proceeding pending between the parties. On the other hand, the opposite party submitted that the issuance of possession certificate in respect of the suit properties in favour of the petitioner and recording of his name in the record of rights was in violation of such order of status quo.

20. It also transpires from the materials on record that the petitioner has moved an application under Order IX Rule 13 of the Code which is still pending. However, nothing is placed before this Court that the petitioner ever moved before the Order IX Rule 13 Court for stay of the

execution proceeding. In ***Ramesh Kumar*** (supra), the Hon'ble Supreme Court was pleased to hold that,

> *"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [AIR 1941 FC 5 : 73 CLJ 51 : 53 MLW 373] Chief Justice Sir Maurice Gwyer observed: (AIR p. 6)*
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> > *"But, with regard to the question whether the court is entitled to take into account legislative changes since the decision under appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In Patterson v. State of Alabama [(1934) 294 US 600] , Hughes C.J. said:*
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> > > *'We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered'."*

And in Pasupuleti Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770 : (1975) 3 SCR 958] Justice Krishna Iyer said : (SCC p. 772, para 4)

> *"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad."*

These principles have since been reiterated and reaffirmed in Hasmat Rai v. Raghunath Prasad [(1981) 3 SCC 103 : (1981) 3 SCR 605]."

21. In ***Sawarni (Smt)*** (supra), the Hon'ble Supreme Court held that *Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue*.

22. In ***Jehal Tanti*** (supra), the Hon'ble Supreme Court held as follows:-

> *"13. We may also notice Section 23 of the Contract Act, 1872, which lays down that:*
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> > ***"23. What considerations and objects are lawful, and what not.***—*The consideration or object of an agreement is lawful, unless—*
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> > *it is forbidden by law; or*
> >
> > *is of such a nature that, if permitted, it would defeat the provisions of any law; or*
> >
> > *is fraudulent; or*
> >
> > *involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy."*
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> *In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent 1 in the teeth of the order of injunction*

passed by the trial court, the same appears to be unlawful."

23. Apparently, in the instant case, the possession certificate was issued in favour of the petitioner and the name of the petitioner was recorded in the record of rights after the order to maintain status quo was passed. However, such order was passed in a separate suit filed on behalf of the opposite party. It is also to be considered that the suit properties involved in the execution case were claimed to be *Khasmahal* lands which exclusively belong to the State. Such right of the parties is pending adjudication in the suit filed on behalf of the opposite party. The said question has been raised by the petitioner in its application under Section 47 of the Code. Such finding on the status of the suit properties would surely have a bearing on the executability of the decree under execution.

24. As noted above, the petitioner has also moved an application under Order IX Rule 13 of the Code before the Court which passed the impugned judgment and decree. The petitioner/defendant does not appear to have moved a similar application for stay of the execution proceeding in the pending proceeding under Order IX Rule 13 of the Code.

25. In view of the discussions made hereinbefore, I am of the opinion that the learned Executing Court was not justified in refusing the stay of the execution proceeding. The impugned order is, accordingly, set aside.

26. However, considering the facts and circumstances of the present case as discussed hereinabove, I direct that let there be a limited stay of the execution proceeding being O. Ex. No. 08 of 2018 until December 31, 2026 or until further orders whichever is earlier. In the meantime, the petitioner shall approach the Order IX Rule 13 Court for stay of the execution proceeding. Any application for stay, if filed, the learned Court shall decide the same in accordance with law, without being influenced by any of the observations made in this judgment and order.

27. With such observations, **C.O. 1320 of 2026** is disposed of.

28. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]