

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 2227 of 2026
Startrack Agency Private Limited
VS.
Efcalon Tie-Up Private Limited**

For the Petitioner	: Mr. Sakya Sen, Sr. Advocate Mr. Zeeshan Haque Mr. Sourav Ganguly Mr. Harsh Agarwal advocates
For the Opposite Party	: Mr. Mainak Bose, Sr. Advocate Mr. S. Banerjee Mr. D. Basu Mallick Mr. R. Upadhyay advocates
Reserved on	: 09.09.2026
Judgment on	: 22.09.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the award debtor and is directed against an order being no. 80 dated 05.06.2026 passed by the learned Judge, Commercial Court at Alipore in IA No. 5 of 2026 and IA No. 6 of 2026 arising out of Misc. Execution (Com) no. 7 of 2020 renumbered as Misc. Ex.(Com) No. 06 of 2020.
2. By the order impugned, the application filed by the award debtor being IA No. 5 of 2026 stood dismissed and consequently the application filed by the award holder being IA no. 6 of 2026 stood disposed of.
3. Misc. Ex. (Com) 7 of 2020 renumbered as Misc. Ex. (Com) 6 of 2020 is filed by the award holder/opposite party herein seeking execution of an interim

award dated 15.07.2017 as modified by the award dated 22.07.2017 directing eviction of the award debtor/petitioner from the property situated at premises no. P-10, Taratala Road, Kolkata. In the said Misc. Execution case the award debtor/petitioner herein filed an application being IA No. 5 of 2026 under Section 47 read with Order 21 Rule 29 and Section 151 of Code of Civil Procedure praying for stay of execution of the award. IA No. 6 of 2026 was filed by the award holder/opposite party herein challenging the maintainability of IA No. 5 of 2026.

4. Facts giving rise to the instant Civil Revision Application in a nut shell is as follows- Kolkata Port Trust (for short "KoPT") subsequently renamed as Syama Prasad Mukherjee Port Kolkata (for short "SMPK") is the original owner of the property being premises no. P-10, Taratala Road, Kolkata and one Das Reprographics Ltd. was the lessee in respect of the said property. Das Reprographic Limited went into liquidation and was ultimately wound up on 21.12.1994. The Official Liquidator took possession of the said premises.
5. Pursuant to an order dated 09.04.2003 as modified by the order dated 01.12.2004, this Hon'ble Court directed KoPT to execute a lease in favour of M/s. Efcalon Tie-Up Private Limited i.e., opposite party herein upon the opposite party clearing of arrears of lease rent due from Das Reprographics Limited to KoPT. The Hon'ble Supreme Court by an order dated 08.05.2006 directed renewal of the lease in favour of the opposite party herein with effect from 04.08.2003 upon recording that the opposite party had sought for such renewal for the purpose of revival of the industrial unit and employment of the workmen.
6. Prior to the order dated 08.05.2006, the opposite party inducted the petitioner into the said premises under an agreement dated 26.12.2004 for a period of 6 years commencing from 01.11.2005 and expiring on 31.10.2011 with an option to renew the same on acceptable terms.

7. The petitioner previously referred the matter to arbitration seeking to cancel the agreement dated 26.12.2004. In the said proceeding the opposite party filed a counter claim seeking recovery of possession, arrears of license fee and other consequential reliefs. The previous learned Arbitrator disposed of the proceeding by declaring the agreement dated 26.12.2004 as null and void and directing it to be delivered up and cancelled and also pass an award of Rs. 1,51,44, 208 to be paid by the opposite party to the petitioner along with interest and cost of arbitration.
8. The said award was challenged under Section 34 and thereafter, under Section 37 of the 1996 Act which culminated in a Division Bench judgment allowing the challenge thereby setting aside the award of the Arbitrator with an observation that the petitioner could not be permitted to stay in possession without paying occupational charges.
9. Thereafter, the opposite party sought to initiate a fresh arbitral proceedings seeking recovery of possession and the consequential reliefs against the petitioner. Upon the matter being referred to arbitration for the second time an interim award dated 15.07.2017 was passed and subsequently the interim order was amended vide corrected award dated 22.07.2017 restricting the interim award only to eviction in terms of the prayers made under Section 31(6) of the 1996 Act.
10. Petitioner challenged the said interim award and the corrected award under Section 34 of the 1996 Act which stood dismissed on contest on 05.01.2021. Being aggrieved by the said order, the petitioner preferred an appeal under Section 37 of the 1997 Act which was registered as FMAT 57 of 2021. The said appeal stood dismissed on contest by a judgment and order dated 22.04.2025 thereby affirming the judgment and order dated 05.01.2021 passed by the learned Judge of the Commercial Court as well as the interim award passed by the arbitrator on 15.07.2017 as amended on 22.07.2017.
11. The petitioner preferred a Special Leave Petition being Diary No. 32428 of 2025 challenging the judgment and order dated 22.04.2025 passed by the

Hon'ble Division Bench in FMAT No. 57 of 2021. The Special Leave Petition stood dismissed as "not pressed" by an order dated 01.09.2025.

12. In the meantime the lease deed dated 23.06.2015 was executed by KoPT in favour of the award holder/ opposite party herein with retrospective effect from 04.08.2003 for a period of 30 years.
13. Petitioner filed a suit being Title Suit no. 1427 of 2015 before the learned Judge, City Civil Court at Kolkata praying for a declaration that the petitioner has a right to enjoy the premises in question and for a further declaration that the lease deed dated 23.06.2015 executed by KoPT in favour of the opposite party is illegal, invalid, inoperative and fraudulent document and, therefore, void ab initio and for permanent injunction.
14. Petitioner being an award debtor filed IA No. 5 of 2026 under Section 47 read with Order 21 Rule 29 of the Code of Civil Procedure raising the point of inexecutability of the impugned award on the ground that the same is nullity and/or void ab initio. The principal ground raised by the petitioner in IA No. 5 of 2026 is that since the lease deed dated 23.06.2015 executed by KoPT in favour of the opposite party has been challenged by the petitioner in T.S.(Com) 32 of 2022 and such suit is still pending, the execution case cannot be proceeded with.
15. The learned Judge of the Commercial Court dismissed the said application being IA No. 5 of 2026 and being aggrieved by such order the award debtor has approached this Court.
16. Mr. Sen learned Senior Advocate appearing for the petitioner contended that the petitioner has challenged the legality, validity and binding effect of the lease deed dated 23.06.2015 executed by KoPT in favour of the opposite party herein in T.S. (Com) 36 of 2022 which is pending before the Commercial Court. He contended that since the lease deed dated 23.06.2015 is illegal, the opposite party did not acquire any right, title or interest in the said property. He further contended that the said lease stood terminated on account of non-payment of arrear rent and breach of the

lease condition and for which the subsisting right, title and interest of the opposite party in the premises in question stood extinguished. He further contended that the issue regarding validity and legality of the lease deed dated 23.06.2015 and the right of the opposite party under the said lease were not adjudicated upon in the arbitral proceedings or in the proceedings under Section 34 and 37 of the 1996 Act arising out of the arbitral award. He further contended that the award passed in favour of the opposite party is founded upon the rights claimed by the opposite party under the lease deed dated 23.06.2015 and the legality of the said deed is under challenge in T.S. (Com) 36 of 2022. He contended that for the aforesaid reason the learned Judge of the Execution Court ought to have passed an order of stay under Order 21 Rule 29 of Code of Civil Procedure. He further contended that the learned Judge of the Commercial Court failed to exercise the jurisdiction vested in it under Order 21 Rule 29 of Code of Civil Procedure. He concluded by submitting that though the parameters for exercise of discretion has been fully satisfied, the learned Judge of the Commercial Court passed the impugned order without considering the parameters that are necessary for exercise of discretion under Order 21 Rule 29 of the Code of Civil Procedure.

17. Mr. Bose learned Senior Advocate representing the opposite party seriously disputed the contention of Mr. Sen. He contended that the execution proceeding cannot be converted into a forum for review or reconsideration of an arbitral award and in support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **MMTC Limited vs. Anglo American metallurgical Coal Private Limited** reported at **(2026) 3 SCC 99** and in the case of **Electrosteel Steel Limited vs. Ispat Carrier Private Limited** reported at **(2025) 7 SCC 773**. He further contended that the petitioner was inducted by the opposite party in terms of the license agreement and, therefore, the petitioner is estopped under Section 116 of the Evidence Act from questioning the right of the opposite party to possession of the premises in question. He further contended that the lease deed dated 23.06.2015 for a period of 30 years commencing retrospectively

from 04.08.2003 was registered pursuant to the order passed by the Hon'ble Supreme Court and the validity of such lease cannot be questioned by the petitioner by filing a suit. He further contended that the petitioner questioned the validity of the lease granted by KoPT and the arbitral tribunal passed the award by relying upon the lease deed dated 23.06.2015. He contended that all the issues were adjudicated upon by the Arbitral Tribunal and an arbitral award was passed against the petitioner for recovery of possession. He submitted that in the application under Section 34 the petitioner raised identical grounds and application under Section 34 stood rejected. The appeal under Section 37 of the 1996 Act also stood dismissed by the Division Bench by an order dated 22.04.2025. He contended that all the issues including the validity of the lease and the right of the opposite party to maintain the proceeding for recovery of possession was examined in the arbitral proceedings.

18. Heard the learned advocates for the parties and perused the materials placed.
19. Record reveals that the petitioner was inducted into the property in question on the basis of an agreement dated 26.12.2004. Thus, the principles laid down in Section 116 of the Evidence Act shall apply to the case on hand and the petitioner is estopped from disputing the title of the opposite party who had inducted him into the suit property.
20. The learned Judge of the Commercial Court rightly noted the provisions of Section 116 of the Evidence Act and correctly applied the proposition of law laid down by the Hon'ble Supreme Court on the principle of estoppel. The learned Judge of the Commercial Court also noted that the Hon'ble Division Bench in the order dated 20.05.2016 passed in FMAT No. 744 of 2015 held that the petitioner having been inducted by the opposite party in terms of a license agreement, the petitioner is estopped under Section 116 of the Indian Evidence Act from questioning the right of the opposite party to possession of the suit premises. The learned Judge of the Commercial Court also noticed that the Hon'ble Division Bench in its order dated 20.05.2016

passed in FMAT No. 744 of 2015 also took into consideration the effect of Section 64 and 65 of the Contract Act wherein it was held that even if it is assumed that the license agreement was void, the petitioner was not entitled to retain the benefits he derived from the license agreement and would have to refund the occupation charges earned by the petitioner by further subletting the said premises to the occupants.

21. The Hon'ble Division Bench in its order dated 22.04.2025 in FMAT No. 57 of 2021 noted that the petitioner in the pleadings of the proceedings arising out of the second arbitration proceeding took the plea of Section 64 and 65 of the Contract Act but no such argument was advanced at the time of hearing of the application under Section 31(6) nor did the arbitral tribunal uphold such contention. In the light of the said findings the Hon'ble Division Bench in its order dated 22.04.2025 held that Section 64 and 65 of the Contract Act do not come into play.
22. In the case on hand the eviction award passed by the arbitral tribunal has been put into execution. The said award has already attained finality in view of dismissal of the application under Section 34 of the 1996 Act by a judgment dated 05.01.2021 and the judgment and order dated 22.04.2025 passed by the Hon'ble Division Bench of this Court followed by dismissal of the special leave petition by the Hon'ble Supreme Court by an order dated 01.09.2025.
23. The instant execution proceeding arises out of an eviction decree. The foundational basis of the proceeding for eviction was the licensor-licensee relationship between the parties. In such a relationship the provisions of Section 116 of the Evidence Act comes into play.
24. The dispute in the pending suit is whether any right, title and interest devolved upon the opposite party pursuant to the lease deed dated 23.06.2015 executed by KoPT in favour of the opposite party. The decision in such a suit cannot have any impact on the relationship between the petitioner and the opposite party which stood determined by the Arbitral

Award and the subsequent orders passed under Section 34 and 37 of the 1996 Act.

25. Order 21 Rule 29 of the Code of Civil Procedure states that where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court on the part of the proceeding against whom the decree was passed, the Court may, on such terms as to security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided.
26. Thus, mere pendency of a suit at the instance of the award debtor against award holder cannot be a ground for stay of all further proceedings of the execution case for executing the eviction award passed by the arbitral tribunal.
27. The petitioner was inducted as a licensee pursuant to an agreement dated 26.12.2004 for a period of six years commencing from 01.11.2005 and expiring on 31.10.2011. After expiry of the license the petitioner could not demonstrate any legal right to remain in possession of the property.
28. The petitioner has suffered an eviction award and is estopped from challenging the title of the opposite party who has inducted the petitioner into the property in question by virtue of an agreement.
29. The petitioner has sought to challenge the title of the opposite party in an indirect way by filing a title suit challenging the legality and validity of the lease deed executed by and between KoPT and the opposite party herein.
30. In **Electrosteel Steel Limited** (supra) the Hon'ble Supreme Court reiterated the well settled proposition of law that at the stage of execution an objection as to inexecutibility of the decree can be raised but such objection is limited to the ground of jurisdiction infirmity or voidness and only a decree which is a nullity can be the subject matter of objection under Section 47 of the Code of Civil Procedure and not one which is erroneous either in law or on facts.

31. In **MMTC Limited** it has been reiterated that any challenge under Section 47 would lie within a narrow compass and at the stage of execution an objection as to executability of the decree can be raised limited to the ground of jurisdiction infirmity or voidness. It was further held that errors of law of facts and law cannot be the subject matter of objection under Section 47. The Hon'ble Supreme Court in **MMTC Limited** (supra) sounded a note of caution that there is a steady rise of proceedings akin to a retrial which causes failure of realisation of the fruits of a decree and unless prima facie grounds are made out entertaining objections under Section 47, maintaining such an objection would be an abuse of process.
32. Petition being IA 5 of 2026 is captioned as one under Section 47 of the Code of Civil Procedure. To the mind of this Court, the petitioner by way of filing such application sought for a retrial of the proceedings which culminated with an eviction award which has been put into execution. There is no quarrel to the proposition of law laid down in **Shaukat Hussain alias Ali Akram and others vs. Smt. Bhuneshwari Devi and others reported at (1972) 2 SCC 731** and **Sri Krishna Singh vs. Mathura Ahir and others reported at (1981) 4 SCC 421** that the Court has the power to stay an execution proceeding subject to fulfillment of conditions under Order 21 Rule 29 of the Code of Civil Procedure.
33. However, from the nature of the principal relief claimed in the title suit filed by the petitioner against the opposite party herein, this Court is of the considered view that pendency of such suit at the instance of a person who was at one point of time inducted by the opposite party in the suit premises cannot have any bearing on the eviction award which has been put into execution.
34. The learned judge of the Commercial Court was right in holding that the execution proceedings cannot be converted into a forum for review or reconsideration of the arbitral award. The learned Judge of the Commercial Court was right in holding that discretion is vested with the Court to stay the execution of an award pending a decision of a suit between same parties

under Order 21 Rule 29 of the Code of Civil Procedure. The learned Judge of the Commercial Court refused to exercise discretion in favour of the petitioner by assigning cogent reasons in support thereof. For all the reasons as aforesaid this Court is not inclined to interfere with such exercise of discretion by the learned Judge of the Commercial Court under Article 227 of the Constitution of India.

35. CO No. 2227 of 2026 stands dismissed. There shall be, however, no order as to costs.
36. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)