

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.30/2023

Sarala Tea Company Private Limited & others

..... Petitioner(s).

V E R S U S

Tripura Tea Development Corporation Limited

.....Respondent(s).

For Petitioner(s) : Mr. S. Deb, Sr. Advocate,
Mr. S. Datta, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

04/07/2023

Petition under Section 47 of the Civil Procedure Code (CPC, for short) in Civil Misc. case No.16 of 2023 arising out of Execution(M) No.01 of 2022 by the petitioners herein has been rejected by the learned Civil Judge (Sr. Division), North Tripura, Dharmanagar vide impugned order dated 03.06.2023, *inter alia*, observing as under:

"Perused the record.

Let us now consider Section 47 of CPC which runs as follows:

"47. Questions to be determined by the Court executing decree. - (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I. - For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II. - (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”

From the record it is revealed that the JD-petitioner at this stage of trial did not raise any issue as to the maintainability of the suit and did not adduce any evidence. It is also revealed that in the judgment dated 17.06.2016 passed by Civil Judge (Sr. Division), West Tripura, Agartala in MS 14 of 2015 that the JD-Petitioner filed their written statement beyond their statutory period of 90 days and was rejected by the Court and the judgment was passed taking assistance of Order VIII Rule 5(2) of CPC.

Thus, the entire contentions of the JD-petitioner under Section 47 of CPC have not been taken up during the stage of trial and a liable to be dismissed in limine.

Furthermore, from the order Hon’ble High Court of Tripura dated 22.05.2023 passed in IA No. 1 of 2023 in connection with RFA No. 3 of 2017 (D/O), it is revealed that the JD-petitioner has approached the Hon’ble High Court of Tripura for restoration of RFA 03 of 2017 along with petition for condonation of delay and in the said order it is clear that the JD-petitioner is willing to pay money to settle the dispute which shows that JD-petitioner has accepted the liability of the decree.

In view of the above the application filed by the JD-petitioner under Section 47 is rejected on merits.

This Misc case is disposed off on contest.

This order is passed on this 3rd day of June, 2023
under the seal and signature of the Court.

Make entry in the relevant T.R."

2. Mr. S. Deb, learned senior counsel assisted by Mr. S. Datta, learned counsel appearing for the petitioners, submits that the learned Court has also taken note of the order dated 22.05.2023 passed on I.A. No.01 of 2023 in connection with RFA No.03 of 2017 (D/O) where the judgment debtor/petitioner has stated clearly that it is willing to pay the money to settle the dispute. The learned Court has, therefore, stated that the judgment debtor has accepted the liability of the decree. Learned counsel for the petitioners submits that the petitioner/judgment debtor is willing to deposit further amount of Rs.25 lakhs within 7(seven) days or make payment to the respondent-Corporation by way of a Demand Draft or RTGS or NEFT and show it to the Court concerned. It is submitted that the next date before the Executing Court is on 06.07.2023. As such, some protection may be granted.

3. Having regard to the aforesaid submissions and what has also been taken note of in the order dated 22.05.2023 at the instance of the same petitioners herein, petitioners are allowed one week time to make good the payment of Rs.25 lakhs in favour of the respondent-Corporation through

Demand Draft/RTGS/NEFT and deposit the proof thereof before the learned Court of Civil Judge (Sr. Division), North Tripura, Dharmanagar in connection with Execution(M) case No.01 of 2022.

4. As such, the instant petition is disposed of with the aforesaid observations.

The instant order be communicated to the learned Executing Court through FAX also.

5. Let it be made clear that this Court has not made any comments on the merits of the claim of the petitioners on the order rejecting the petition under Section 47 of the CPC preferred by the petitioners as petitioners have unequivocally accepted their liability to make the payment as aforesaid. In case, the petitioners fail to make the payment as indicated above, the Executing Court would be at liberty to proceed in accordance with law thereafter. On payment of the aforesaid amount, it is open for the Executing Court to consider whether the decree stands executed by the judgment debtor.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ