

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP. No.53 of 2022

Gourchand Adhikari

.....Petitioner

_V_E_R_S_U_S_

Sri Sri Radha Binod Jew (Idol) & Ors.

.....Respondents

For Petitioner(s) : Ms. R. Purkayastha, Advocate.

For Respondent(s) : Mr. H. Deb, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_F_I_N_A_L_O_R_D_E_R_

27/07/2023

Heard Ms. R. Purkayastha, learned counsel appearing for the petitioner and Mr. H. Deb, learned counsel appearing for the respondents.

The present petition has been filed under Article-227 of the Constitution of India for revision of the impugned judgment and order dated 04.10.2018 passed by the learned Civil Judge (Jr. Division), Kailashahar, Unakoti Judicial District in connection with case No. Execution 01 (T)/2015 arising out of T.S.03/2011 and for quashing and setting aside the same. Further, legality validity and propriety of the impugned judgment and order dated 04.10.2018 passed by the learned Civil Judge (Jr. Division) Kailashahar, Unakoti Judicial District in connection with the case No. Execution 01(T)/2015 arising out of T.S.03/2015 wherein, most illegally the learned Executing Court has sentenced the petitioner with civil imprisonment for two months for the willful disobedience of the judgment and decree passed in connection with case No. T.S.03 of 2011.

The case of the petitioner in brief is that the respondent No.1 had filed one execution case vide Ex. 01 (T) of 2015 under Order-XXI Rule-32 of the Code of Civil Procedure before the learned Civil Judge (Jr. Division), Kailashahar, Unakoti Tripura, against the instant petitioner along with the respondents No.2-6 thereby praying for punishing the impleaded the parties for disobedience and gross violation of the decree of perpetual injunction dated 17.05.2023 passed by the learned trial Court passed in T.S. 03 OF 2011.

It is pertinent to mention here that the present petitioner, though had been illegally impleaded as judgment debtor No.7 in Ex.01 (T) of 2015, but he had not been impleaded as a party/defendant in T.S.03 of 2011 and as such, he did never had any opportunity to contest the suit against the respondent No.1 praying for perpetual injunction and the petitioner had placed this specific submission before the Executing Court amongst others. However, after hearing both the parties, the learned Executing Court most illegally by the impugned judgment and order dated 04.10.2018 has sentenced the petitioner with civil imprisonment for two months for the willful disobedience of the judgment and decree passed in connection with case No. T.S.03 of 2011.

Against the impugned judgment dated 04.10.2018, the petitioner had preferred an appeal vide T.S.05 of 2019 before the learned Addl. District Judge, Unakoti Judicial District, Kailashahar. The learned Appellate Court by the impugned judgment dated 11.06.2019 dismissed the appeal on deciding all the issues against the petitioner.

Being highly aggrieved, the petitioner has filed the present revision petition before this Court for redress.

Ms. R. Purkayastha, learned counsel appearing for the petitioner has submitted that the learned Court below failed to consider that the instant petition, though had been illegally impleaded as Judgment Debtor No.7 in Ex. 01(T) of 2015, but he had not been impleaded as a party/defendant in T.S.03 of 2011 and as such, he did never had any opportunity to contest the suit against the respondent No.1 praying for perpetual injunction and as such, the judgment dated 15.05.2013 has no legal enforcement against the petitioner.

From the issues framed by the learned Executing Court, it becomes crystal clear that no issue, the issue No.1 in particular, in respect of the petitioner has been framed. Be it mentioned here that no decision can be arrived at without framing an issue where as in the impugned judgment without framing any issue against the petitioner, order for civil imprisonment has been imposed upon the petitioner most illegally. The decree of injunction has been passed only in favour of Sri Sri Radha Binod Jew (Idol) and not in favour of predecessor of respondents represented by Rasendra Mitra. Therefore, the respondent No.1 have no *locus*

standi to file execution case against the petitioner on the basis of the judgment dated 15.05.2013. The petitioner has submitted that the facts and circumstances of this case warrant interference of this Court. It has been further contended that the impugned judgment under challenge the petitioner had preferred one civil revision petition registered and numbered as CRP 107 of 2019 but, due to some defects in the petition, on 14.09.2020 the petitioner had withdrawn the same with a liberty to file afresh.

Having heard the learned counsel appearing for the parties and after perusal of the material evidence on record, it has been categorically stated in the execution proceeding by the DW-1 that he is not interfering with the suit schedule property and the title and interest accrued thereupon. In view of the same, taking a lenient view, this Court allows the present petition in favour of the petitioner by setting aside the order of suffering for two months imprisonment for willful disobedience. Accordingly, the present petition is disposed of. However, it is made clear that in the event, if the petitioner, DW-1 again interferes in any manner, it is open for the respondents to take appropriate steps against him in accordance with law.

In terms of the above, the present petition stands disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh

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