

GAHC010279292023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/431/2023

TARINI KANTA NATH
S/O- LATE PRABHAT CH. NATH,
R/O- VILL. KUWARIGAON,
P.O.- BONGORA, P.S.- AZARA,
DISTRICT- KAMRUP(M), ASSAM.
PIN- 781015.

VERSUS

SAKUNTALA DEVI
W/O- LATE GIRISH CHANDRA SARAM
R/O- VILLAGE- BULLARPAR,
P.O.- GAUHATI AIRPORT,
P.S.- AZARA,
DISTRICT- KAMRUP(M), ASSAM,
PIN- 781015.

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18.12.2023

Heard Mr. H. Das, learned counsel for the petitioner.

2. By filing this application under Article 227 of the Constitution of India, the petitioner, who is the judgment debtor, has prayed for setting aside the order dated 03.12.2022, passed in T.S. No. 338/2013, which was decreed by the learned Civil Judge (Senior Division) No.3, Kamrup (Metro), Guwahati, as well as order dated 05.10.2023, passed by the said learned Court in petition on 443/2020, filed by the petitioner and allowing the restoration application of the proceedings on T.Ex. Case No. 29/2019.

3. Insofar as the challenge to order dated 05.10.2023 passed by the learned Civil Judge (Senior Division) No.3, Kamrup (Metro), Guwahati in Misc.(J) Case No. 328/2023 in T.Ex. Case No. 29/2019 is concerned, it is observed that the execution petition filed by the respondent (decree holder) was dismissed for non-prosecution by order dated 09.01.2023. A restoration application was filed, which was accompanied by an application under Section 5 of the Limitation Act for condoning the delay in filing the restoration application. Accordingly, by the impugned order, the delay of 30 days beyond the period of limitation in filing the restoration application was condoned.

4. In respect of the said challenge, the Court finds that there is no bar for in the Civil Procedure Code for filing of a subsequent execution petition after the first one is dismissed for non-prosecution. Moreover, Clause-(f) of Sub-Rule (2) of Rule 11 of Order XXI CPC contains provisions for declaring before the executing Court the description of the previous application for execution of decree and other particulars as provided therein. Therefore, as apparently there is no bar for the second application being filed within the period of limitation prescribed for executing a decree, the Court is constrained to hold that the petitioner does not suffer any prejudice on the condonation application being Misc.(J) Case No. 328/2023 being allowed by the impugned order dated

05.10.2023.

5. Under such circumstances, the Court is not inclined to accept the challenge made in respect of order dated 05.10.2023, passed in Misc.(J) Case No. 328/2023 and accordingly, said challenge is rejected.

6. Insofar as challenge to order dated 03.12.2022, passed in T.S. No. 338/2013 is concerned, the Court is of the considered opinion that the issue relating to challenge to order dated 03.12.2022 is not alive in as much as the execution petition has been dismissed, the learned trial Court is now required to take up and adjudicate the proceedings of Misc.(J) Case No. 527/2023. Therefore, in the event the execution proceedings are restored and in the event the petitioner is still advised to challenge the order dated 09.01.2023, the petitioner would have the liberty to approach the Court again.

7. With the aforesaid observation, this petition stands disposed of.

JUDGE

Comparing Assistant