

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.22 of 2024

Sri Raiharan Datta & others

.....Petitioner(s);

Versus

Sri Parimal Ch. Baidya & others

.....Respondent(s)

For Petitioner(s) : Mr. Kundan Pandey, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

21/03/2024

Heard Mr. Kundan Pandey, learned counsel for the petitioners.

2. Petitioners and proforma respondents succeeded in RFA No.01/2011 vide judgment & order dated 24.07.2014 and got a decree in their favour to the extent that defendant No.1/respondent No.1 herein was directed to execute registered deed of sale in favour of plaintiffs for .101 acres of remaining suit land within 45 days from the date of appellate decree failing which it would be executed through the Court. Defendant No.1 was further directed to return the remaining amount of Rs.9,81,250/- with 10% interest thereon from 13.11.2008 to the plaintiffs within 45 days from the date of appellate decree failing which they would be entitled to recover the amount in due process of law.

3. The plaintiffs/petitioners herein had preferred RFA No.01/2011 on dismissal of Title Suit No.19/2009 instituted for specific performance of contract with consequential reliefs. Execution (T) 07/2014 was instituted only against defendant No.1 as the operative decree was only against the defendant

No.1. The execution suit was disposed of by order dated 25.09.2017 in the following manner:

“Ld. Counsel for the DHs and the JD are present.

Received a report from the Sheristadar.

As per report Sale Deed has been properly executed by her before the Sub-Registry Office, Udaipur, Gomati District.

Ld. Counsel for the DHs submitted that the DHs will have no grievance if this execution case is closed today as Sale Deed is already executed.

Nothing stated by the DHs about the execution of decree regarding the cash amount of money nor they took any step in this respect though there were several directions from the Court.

Accordingly, it appears that the DH is satisfied with the execution of Sale Deed and they are not interested for any kind of further execution of the decree involved in this case.

Accordingly, this case is disposed of with contest on satisfaction of the decree so far the matter of execution of Sale Deed is concerned.

Make necessary entry in the Trial Register.

Pronounced.”

4. After 1502 days, petitioners herein who are the plaintiffs/appellants No.1 to 7 preferred a review petition being Civil Misc (Review) 01/2021 under Section 114 read with Order 47 and Section 151 of the CPC along with a condonation application being Civil Misc (Condo) 03/2021 under Section 5 of the Limitation Act for condonation of 1502 days of delay. The petitioners took a plea that they were unaware of the disposal of the execution case as their learned counsel Mr. Shyamal Bhattacharjee had left the State of Tripura thereafter. It was only on 20.11.2021 when they met learned counsel Mr. Raju Datta in connection with Title Suit No.37/2019, learned counsel Mr. Datta upon inquiries informed them that the decree-holders have not received the amount of Rs.9,81,250/-. Thereafter, certified copies of the order passed in Execution (T) 07/2014 were obtained and the instant review petition was preferred which suffered from a delay of 1502 days. It was filed on 15.12.2021. Petitioners have assailed the impugned order on the ground that the learned Court has, instead of considering the explanation upon condonation of

delay, rejected the application on merits by referring to the order dated 25.09.2017 by which the execution case was disposed of. He submitted that the petitioners were illiterate and unaware of the disposal of the execution case. Therefore, there was delay in seeking review of the order dated 25.09.2017 disposing of the execution case. It is submitted that the learned Court has also not discounted the period of COVID-19 delays from 15.03.2020 till 15.12.2021 in view of the order passed by the Apex Court in *Suo Motu WP(C) No.03/2020*. Petitioners who are rightful decree-holders would be denied the fruits of the decree passed in their favour by the Appellate Court. Therefore, they have approached this Court under Article 227 of the Constitution of India.

5. I have considered the submission of learned counsel for the petitioners, gone through the pleadings and the enclosed documents on record which include copy of the judgment & order passed in RFA No.01/2011, copy of the Execution (T) 07/2014, order sheets of the title execution case from 18.08.2016 till 25.09.2017 when it was disposed of and also the review application along with the condonation of delay application. I have also perused the impugned order.

The learned Court, while considering the grounds for condonation of delay, has also adverted to the order dated 25.09.2017 by which the execution case was disposed of. A perusal of the order sheets of the execution case enclosed by the petitioners from 18.08.2016 till 25.09.2017 show that apart from steps taken for execution of the sale deed by the judgment-debtor, no steps were taken by the decree-holders for execution of the decree regarding the cash amount of money. When the matter was taken up on 25.09.2017, the counsel representing the decree-holders submitted that the decree-holders will

have no grievance if the execution case is closed as sale deed has already been executed. It appeared to the Court that the decree-holders were satisfied with the execution of sale deed and were not interested in any kind of further execution of the decree involved. Therefore, the case was disposed of on contest on satisfaction of the decree so far as the execution of sale deed is concerned.

6. Decree-holders/plaintiffs have in their review application and delay condonation application taken a plea that they have not been informed about the disposal of the execution case by the erstwhile counsel. They only became aware of it when they approached another learned counsel on 20.11.2021 in connection with Title Suit 37/2019. It is difficult to accept that a decree-holder would remain completely oblivious of the execution case instituted by him for satisfaction of the decree which included execution of sale deed and payment of certain amount by defendant No.1 over a period of four years since the execution case was disposed of by order dated 25.09.2017. This plea, therefore, appears to be an afterthought and that too upon a legal advice rendered by another counsel in November, 2021 when the petitioners approached him in connection with another Title Suit 37/2019.

7. There is a timeline for execution of any decree as has also been mandated by the Apex Court in the case of **Rahul S. Shah v. Jinendra Kumar Gandhi and Others** reported in (2021) 6 SCC 418. If the execution case is kept pending beyond six months, the Executing Court has to record reasons as to why the decree has not been executed by that time. The execution case was instituted in 2014 and it was disposed of after several dates on 25.09.2017 since

the sale deed had been executed and the decree-holders did not take any steps for execution of the amount of money and they appeared to be disinterested for any kind of further execution of decree involved in the case. The learned Executing Court after recording these observations disposed of the execution case on contest as it had no reason to keep the execution case pending. Even if the period of COVID-19 delays from 15.03.2020 till filing of the review application on 15.12.2021 is excluded, still the delay of approximately 2 years and 5 months is not worth condonation in the absence of any sufficient explanation. The learned Court, after hearing the parties and also taking note of the objection of the judgment-debtor, therefore, came to a view that the parties were not so literate and had been residing within Udaipur area and could have come within time to seek review of the order if they were dissatisfied with the disposal of the execution case. Revival of an execution case, after such a length of time and that too at the behest of parties who apparently were not interested in full execution of the decree, would also amount to condoning the lapses on the part of the petitioners.

8. Therefore, taking into account all these facts and circumstances and the reasons recorded hereinabove, this Court does not deem it proper to invoke its jurisdiction under Article 227 of the Constitution of India to interfere in the impugned order as it does not suffer from any errors of jurisdiction or is perverse in the eye of law. As such, the instant revision petition is dismissed.

9. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/