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SK
Ct. No. 18
22.12.2020

C.O. No. 3629 of 2009
CAN 1 of 2010 (Old No. : CAN 8337 of 2010)
CAN 2 of 2019 (Old No. : CAN 11641 of 2019)
(Via Video Conference)

Smt. Santilata Basu
Vs.
Smt. Sankari Sett & Ors.

Mr. Haradhan Banerjee,
Mr. Amitava Pain ... For the petitioner.

Mr. Bikram Banerjee ... For the opposite parties.

The following observation of the privy council in 1872 regarding plight of a decree-holder in executing a decree is still relevant as the fact of the present case would demonstrate.

“.....the difficulties of a litigant in India begin when he has obtained a decree.....”

The Hon’ble Supreme Court in the case of ***Satyawati vs. Rajinder Singh and another*** reported in **(2013) 9 SCC 491** also reiterated the relevancy of the said observation till date.

The predecessor-in-interest of the opposite party nos. 1, 2 and 3 filed a suit in the year 1969 for eviction of the predecessor in interest of the petitioner and the opposite party no. 4,5 and 6 herein being Ejectment Suit No. 892 of 1969.

The said suit was initially decreed on August 18, 1970, but the decree was set aside in appeal. The

appeal Court remanded the suit back to the trial Court for a fresh decision.

The suit after remand was once again decreed on December 19, 1981. The appeal Court affirmed the said decree on July 29, 1986.

The decree-holder thereafter put the said decree into execution. The first execution case was not pressed by the decree-holder and the second execution case was dismissed for default. However, the heirs of the original decree-holder with the leave of the Court levied the execution case no. 10 of 1994 before the learned 6th Judge, Small Causes Court at Calcutta out of which the present revisional application arises.

The prayer of the decree-holder for police assistance to execute the said decree was allowed in the year 1996.

At this stage the judgment-debtor filed an application under Section 47 of the Code of Civil Procedure challenging the executability of the said decree being Misc. Case No. 183 of 1996 subsequently re-numbered as Misc. Case No. 291 of 2006. The grounds on which such challenge was thrown are that the area of the suit property has been enlarged as judgment-debtor has made further construction over the suit property on the basis of an agreement with the son of the decree-holder for which the decree has

become inexecutable for want of specification and the execution has been levied without notice to the judgment-debtor.

The executing Court by the order impugned being order no. 129 dated September 14, 2009 has dismissed the said application holding that the judgment-debtor has failed to prove the existence of such agreement and the other allegation.

The grounds on which the judgment-debtor is seeking to impeach the execution, discharge or satisfaction of the decree are not coming within the sweep of Section 47 of the Code so as to declare that the decree is inexecutable.

Therefore, I do not find any reason to interfere with the order impugned.

Mr. Haradhan Banerjee, learned counsel for the petitioner submits that there are post litem development affecting the executability of the said decree and he seeks leave of this Court to file appropriate application to bring those facts on record.

Leave as sought for by Mr. Banerjee, in my opinion if granted would enlarge the scope of the present revisional application. Therefore, I am not inclined to grant such leave to the petitioner.

However, it is always open for the petitioner to question the executability of the decree under execution on the basis of any new ground affecting

the execution, discharge or satisfaction of the said decree and the dismissal of the present revisional application cannot stand in the way of the petitioner to adopt such recourse.

C.O. 3629 of 2009 is disposed of with the above terms. No order as to costs.

The executing Court, keeping in view of the age of the decree is requested to make all endeavour to dispose of the execution case expeditiously.

In view of the disposal of the main application, the connected applications being CAN 1 of 2010 (Old No. : CAN 8337 of 2010 and CAN 2 of 2019 (Old No. : CAN 11641 of 2019) are disposed of accordingly.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)