

S/L 21
22.12.2020
Court. No. 19
GB

C.O. 108 of 2020
With
CAN 1 of 2020
(Old No. CAN 4960 of 2020)
with
CAN 2 of 2020
(Old No. CAN 4962 of 2020)

Sri Sabyasachi Ghosh
Vs.
Smt. Pushparani Das

(Through Video Conference)

Mr. Rahul Karmakar,
Mr. Subham Ghosh.

...for the Petitioner.

Mr. Partha Sarathi Das.

...for the Opposite Party.

The petitioner is the decree-holder in Title Suit No.134 of 2002. The said suit was decreed ex parte on February 19, 2008. The suit was for specific performance of contract.

By the judgment and decree dated February 19, 2008 the judgment debtor was directed to execute and register an appropriate sale deed in favour of the plaintiff in respect of the suit property within two months since the passing of the judgment and on receipt of balance consideration money. In the event of failure on the part of the judgment debtor to comply with the said judgment and decree, the decree-holder was at liberty to file an appropriate application. As the

judgment debtor failed to execute the sale deed in favour of the petitioner, the petitioner put the decree into execution by filing Title Execution Case No.02 of 2010.

Coming to know of the ex parte judgment and decree, the judgment debtor/opposite party filed Misc. Case No.205 of 2010 being an application under Order IX, Rule 13 of the Code of Civil Procedure along with an application for condonation of delay. The said application under Order IX, Rule 13 of the Code of Civil Procedure was dismissed after contested hearing on July 4, 2015. Thereafter, the judgement debtor/opposite party on August 27, 2015 filed an application under Section 28 of the Specific Relief Act, 1963 for rescission of the agreement for sale on the ground that the petitioner had failed to comply with the condition of the decree by not paying the balance consideration price within two months as stipulated in the decree. The said application was allowed by the learned trial judge by an order dated August 30, 2016.

Challenging the aforementioned order the petitioner preferred C.O. No.4271 of 2016. In the meantime the execution case was dismissed for default. The petitioner filed an application for restoration of the execution case and by an order dated August 30, 2016 the learned trial judge dismissed the restoration application as infructuous.

Challenging the same the petitioner filed C.O. No.454 of 2017. Both the civil revisions, namely, C.O. 4271 of 2016 and C.O. No.454 of 2017 were taken up for hearing together

by a Coordinate Bench of this Court and by judgment and order dated October 1, 2019 His Lordship set aside the order of rescission of the agreement for sale passed by the learned trial judge dated August 30, 2016, and the learned court below was directed to hear out the application for restoration of Title Execution Case No.02 of 2010 afresh. On the basis of such direction, the application for restoration was reheard and the order impugned was passed.

Mr. Das, learned advocate for the opposite party submits that the restoration application was rightly dismissed because the explanation given by the petitioner in the application for restoration was unbelievable. When the petitioner chose to appear in other proceedings, it cannot be accepted that he would not take steps in the execution proceeding for two long years, although the proceedings were in the same court arising out of the same suit. He further submits that the executing court has expressed its discretion and discretion should not be interfered with.

Heard the parties. Records reveal that the earlier rejection of the restoration application was on the ground that since the contract had been rescinded the application had become infructuous. This Court directed the learned Judge to rehear the application for restoration as the order rescinding the agreement for sale had been set aside. Records also reveal that the petitioner had taken steps in the execution case by depositing the balance consideration money, submitting the draft deed for approval, the stamp

duty and the date for registration was fixed on September 20, 2013. However, it appears from the application for restoration that the petitioner could not take steps on three occasions, namely, on September 20, 2013, December 12, 2014 and August 7, 2015 due to misposting of the dates in the diary of the learned advocate. There is another angle to the matter, inasmuch as, the petitioner had diligently participated in the proceedings filed by the opposite party for setting aside the ex parte decree and had also participated in the proceedings under Section 28 of the Specific Relief Act. Having been unsuccessful before the learned executing court at the stage of hearing of the application under Section 28 of the Specific Relief Act, the petitioner approached this Court for appropriate relief.

It is also true that title execution case was dismissed for default. The petitioner filed an application for restoration soon after such dismissal but the said application was disallowed on the ground that as the contract had been rescinded the execution case had become infructuous. Challenging the aforesaid order the petitioner preferred a revisional application and this Court directed the learned Executing Court to rehear the application for restoration in view of the fact that the order by which the agreement for sale was rescinded had been set aside by His Lordship.

Having perused the documents on record, the petitioner cannot be termed as a callous, negligent and irresponsible litigant. The facts narrated hereinabove clearly

indicate that the petitioner has been following the case regularly and has taken all steps that were required under the law to protect his decree. The learned court below disbelieved the reason shown by the petitioner for not taking steps on three occasions, which was misposting of dates in the diary of the learned advocate. The conduct of the petitioner speaks otherwise. When a litigant has been following the matter and persuing the remedy available to him under the law and has been contesting the proceedings initiated by the judgment debtor, it is unfair to think that the litigant will allow his execution to go unattended and allow the decree to be furstrated.

Therefore, in all fairness, I feel that the reason assigned by the petitioner that due to misposting of the dates in the diary of the learned advocate is not unbelievable and cannot be totally disregarded in view of the fact that the petitioner had fulfilled his obligation under the decree by depositing huge amount of money for the execution of the deed of sale. When the petitioner was diligently contesting the other proceedings arising out of this decree, it cannot be accepted that the petitioner would intentionally allow his execution case to fail on account of his non-appearance.

Under such circumstances, the order impugned dated December 21, 2019 passed by the learned Civil Judge, Senior Division, 1st Court at Barasat in Execution Case No.02 of 2010 is set aside and quashed. The Title Execution Case No.02 of 2010 is restored to its original file and number

provided the petitioner pays a cost of Rs.3,000/- to the judgment debtor/opposite party. Such cost to be paid by tendering an account payee cheque in favour of the opposite party. The said cheque should be handed over either to the petitioner or his learned advocate-on-record in the court below. A receipt shall be given to the petitioner. Upon depositing the receipt before the learned court below, the learned court below shall restore the execution case to its original file and number and proceed with the execution case in accordance with law.

This Court has not made any observation with the merits of the claims of either of the parties. With the disposal of the revisional application all connected application are disposed of. It is expected that the said execution case shall conclude within a period of two months from the next date fixed. Disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)