

15 16.10.2020
Ct.19 RP

CO 803 OF 2020
Amal Sengupta
Vs.
Smt. Anjali Chakraborty & Ors.

Mr. Shiba Prasad Ghose
Mr. Abhishek Shaw

.... For petitioner

This civil revision petition is directed against order dated 18th January, 2020 passed by Civil Judge (Junior Division), 2nd Court, Sealdah in execution being Misc. Case no.33 of 1997 (Amal Sengupta vs. Anjali Chakraborty & Ors.).

Mr. Ghose, learned advocate appears on behalf of petitioner and submits, his client is successful plaintiff in the suit, decreed. Defendants in the suit applied under section 47 of the Code of Civil Procedure, 1908, which was dismissed for default by order dated 4th May, 2018. In that case opposite party no.9 had gone and got himself added as party. Upon dismissal of the section 47 miscellaneous case, present miscellaneous case for execution of the decree was being proceeded with. Opposite party no.9 applied invoking provision of order 1 rule 10(2) of the Code, for being added as party in the execution misc. case. By impugned order same was allowed. Coordinate Bench (Biswajit Basu, J.) had admitted this petition on 13th March, 2020, directed service and stay of operation of impugned order. Mr. Ghose files affidavit-of-service to demonstrate that opposite party no.9 is on notice. However, said opposite party no.9 goes unrepresented.

It is clear that executing Court acted with illegality in making impugned order. The order was made for addition

of party. The provision invoked says that Court may at any stage of the proceedings, inter alia, add a party whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The suit stands decreed. There is no question that will arise for further effectual and complete adjudication in the suit. Remedy for opposite party no.9 is provided elsewhere in order 21.

The revision petition succeeds. Impugned order is set aside. Mr. Ghose prays for a direction for expeditious proceeding with the execution case. His submission is recorded. Petitioner will obtain and file this order before executing Court.

(ARINDAM SINHA, J.)