

Ct. 03
Item No.07
01.10.2020
(suvendu)

CO 1245 OF 2020

With

**IA No. CAN 1 OF 2020
(Via Video Conference)**

Smt. Usha Banerjee & Ors.

Vs.

Smt. Maitrayee Banerjee & Ors.

Mr. Sounak Bhattacharya.

.....for the Petitioners

The petitioners seek expeditious disposal of a Title Suit filed in 1990 for partition which is pending before the learned Civil Judge (Senior Division), 5th Court at Alipore.

Learned counsel appearing for the petitioners submits that the Title Suit for partition has been pending since 1990 and places several orders passed by this Court in two Revisional Applications which noticed the lay approach of the concerned Court in proceeding with the matter. Counsel submits that all five petitioners are above eighty years of age and hence there is an immediate need for the Title Suit to be disposed of as early as possible. Counsel places an order dated 20th September, 2017 in a Civil Revisional Application filed by the petitioners which noted the complaint of the petitioners that in a Suit of 1990, the Commissioner was being cross-

examined from 2016 and which remained adjourned till November, 2017. The Civil Revisional Application was disposed of with a direction upon the concerned Court to complete the cross-examination of the Commissioner within a reasonable period of time.

The petitioners were constrained to file another Revisional Application in 2019 wherein an order was passed on 25th June, 2019 recording the inexplicable delay on the part of the concerned Court to proceed with the matter. It was also noted that the earlier order dated 20th September, 2017 had been received by the concerned Judge despite which there had been no progress in the hearing of the Suit. By the said order, the trial Judge was directed to conclude the cross-examination of the Partition Commissioner on the next date fixed, namely 2nd July, 2019 and alternatively to finish the same within seven days from 2nd July, 2019. It was further directed that the time limit fixed by the Court for conclusion of the cross-examination of the Partition Commissioner was to be treated as “peremptory and mandatory”.

Counsel places a series of orders passed by the concerned Court thereafter which show an utter lack of diligence on the part of the concerned Court for complying with the directions of this Court passed in the Civil Revisional Applications filed by the

petitioners. The last relevant order is of 24th September, 2019 which shows that the concerned Court intended to pass an order in the Suit presumably in the nature of a decree. Counsel places an information slip obtained from the Registry of the Alipore Court which shows that the matter has now been fixed on 18th December, 2020.

Having regard to the above facts, it is clear that the learned Court below has failed to take necessary steps in disposing of the Title Suit of 1990. The orders passed by the concerned Court show a form of disregard to the directions passed by two learned Judges of this Court. There is also no reason for the matter now to be fixed in December, 2020 when the judgment has been pending since September, 2019. The age of all five petitioners is a relevant consideration in directing the learned Civil Judge (Senior Division), 5th Court at Alipore to dispose of the Title Suit no. 06 of 1990 within one month from the date of this order. There should be no further delay in disposing of the Title Suit.

CO 1245 of 2020 and the connected application being CAN 1 of 2020 are disposed of in terms of above observations.

(Moushumi Bhattacharya, J.)

