

19.11.2020

Item no. **06**

Dd/aloke

Through Video Conference

CO 1366 of 2020

Shiwnath Prosad Mahato

Vs.

Minati Saha & Ors.

Mr. Saunak Bhattacharya

Mr. Debabrata Roy

... .. For the Petitioner

1. The defendant in a suit for specific performance of an agreement for sale of immovable property is the petitioner in this application under Article 227 of the Constitution.

2. The suit was decreed in terms of provisions of the Specific Relief Act upholding the agreement on the strength of which the suit was instituted.

3. Thereafter, the defendant, who has filed this application before the High Court, filed an application before the court below invoking Section 47 of the Code of Civil Procedure. The plea was that there was no pleading in the plaint in consonance of Section 16 of the Specific Relief Act and readiness and willingness of the plaintiff in terms of that provision has not been pleaded or proved.

4. It is the principle of law that the question whether the plaintiff has pleaded or proved requisite details and ingredients in terms of Section 16 of the Specific Relief Act is a matter relevant for adjudication of suit for specific performance and is not an issue which affects the jurisdiction of the

Court to such extent that the decree would be treated as not executable and resultantly liable to be unenforced on the strength of an application under Section 47 of the Code of Civil Procedure. The application filed by the defendant before the Court below invoking Section 47 is totally misplaced and contrary to the scheme of the Code of Civil Procedure. There was absolutely no reason for the trial Judge to entertain that application and undertake the exercise of even examining the witnesses, as has been done in this case.

5. For the aforesaid reasons, I am not inclined to accede to the submission made by the learned counsel for the petitioner that the questions raised on merits of the facts ought to have been considered. If such issues are raised in an application under Section 47 of the Code of Civil Procedure; notwithstanding that those issues do not arise in terms of Section 47 of the Code, all such issues would be directly, substantially and constructively, covered by the principles of res judicata, having regard to the finality obtained by the directions for specific performance issued by the trial court.

6. Hence, I find no merit in this matter calling for its admission to file.

In the result, the revision petition is dismissed in limine.

(Thottathil B. Radhakrishnan, C.J.)