

4th August,
2021
(AK)
14

C.O. 229 of 2020

**Sri Balai Chandra Mitra
Vs.
Sri Rathin Mitra and others**

(Via video conference)

Mr. Sudeep Sanyal
Mr. Snehasis Jana
... For the Petitioner.

Mr. Rwitendra Banerjee
Mr. Devdutta Pathak
...For the Opposite Party Nos.1 & 2.

The present revisional application has been preferred by the decree-holders in a suit for eviction against an order, whereby Miscellaneous Case No.6 of 2018, arising out of an application filed by the judgment-debtors/opposite parties under Section 47 of the Code of Civil Procedure was allowed subject to fulfillment of certain conditions.

Learned counsel for the petitioner argues that the order is devoid of proper reasons and does not disclose any ground under Section 47 of the Code to justify allowing the said application.

It is submitted that after repeated efforts to frustrate the decree, by filing an application for restoration under Order IX Rule 13 unsuccessfully and thereafter another application for restoration of the same,

the execution proceedings have been dragged indefinitely by the opposite parties.

That apart, it is contended that the application under Section 47 does not disclose any ground within the contemplation of the said provision.

Learned counsel appearing for the judgment-debtors/opposite parties contends that the pending application of the judgment-debtors/opposite parties for restoration of the miscellaneous case under Order IX Rule 13 of the Code of Civil procedure shall become infructuous in case the decree is executed prior to disposal of the same.

However, such ground is not enough for allowing an application under Section 47 of the Code. It has been held time and again by this court that the real woes of the decree-holder starts after getting the decree, which is fully substantiated and exemplified in the present case.

Not stopping at the rejection of the application under Order IX Rule 13 of the Code, the successors of the judgment-debtor, that is, the present opposite parties resorted to further dilatory tactics by taking out another application for restoration of the restoration application.

Mere pendency of appeal or an application under Order IX Rule 13 of the Code cannot operate as automatic stay of an eviction decree, let alone any further application for restoration of the application under Order IX Rule 13.

Moreover, a plain perusal of the application under Section 47 of the Code reveals that no ground whatsoever has been made out by the opposite parties therein under the said provision.

The only attempt of the opposite parties, as is obvious from their conduct, established by the materials annexed to the revisional application, is to protract the proceedings to deprive the decree-holder/petitioner from getting the fruits of his decree.

Accordingly, C.O. 229 of 2020 is allowed, thereby setting aside Order no.43 dated December 9, 2019 passed by the Civil Judge (Senior Division) at Ghatal, District-Paschim Medinipur in Judicial Miscellaneous Case No.6 of 2018, arising out of Title Execution No.2 of 2017.

The opposite parties shall pay costs of Rs.20,000/- to the decree-holder/petitioner within a fortnight from date.

In default, the said costs shall be deemed to be a part of the eviction decree and executed in accordance with law. The executing court shall dispose of Title Execution No.2 of 2017 as expeditiously as possible.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)