

10.08.2021
(S/L-32)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 586 of 2019

Narendranath Roy
-Vs-
Inuddin Ahemmad

Ms. Susmita Saha Dutta
Mr. Niladri Saha,
..... For the Petitioner.

Mr. Partha Sarathi Bhattachayya (Sr. Advocate.),
Mr. Raju Bhattacharyya,
..... For the Opposite Party.

The judgment-debtor in a suit for specific performance is the petitioner of the present application under Article 227 of the Constitution of India.

The decree passed in O.C. 62 of 1985 on August 27, 1990 by the learned Civil Judge (Junior Division) Raiganj, District- Uttar Dinajpur was put into execution giving rise to connected execution case being O.C. 1 of 1994.

The petitioner had challenged the order no. 12 dated November 03, 2016 passed in the said Execution Case in revision under Section 115 A of the Code of Civil Procedure before the learned District Judge Uttar Dinajpur at Raiganj being Civil Revision Case no. 12 of 2016.

The learned District Judge by the judgment and order dated September 25, 2018 dismissed the said revision case as not maintainable.

The petitioner by the present application under Article 227 of the Constitution of India initially challenged the said order of the Revisional Court but the Co-ordinate Bench while admitting the present application by the order dated March 05, 2019 has treated the present application to be directed against the said order dated November 03, 2016 passed by the Executing Court.

Ms. Susmita Saha Dutta, learned advocate appearing on behalf of the petitioner submits that the execution case was dismissed for default in presence of the petitioner/judgment-debtor but restoration thereof was made without serving notice to him, the said order for restoration of the Execution Case being not in accordance with law, consequential order for issue of fresh writ of possession dated November 03, 2016 is not sustainable.

I am unable to accept such contention of Ms. Saha Dutta for the simple reason that the order for restoration of the said Execution case has not been challenged, in fact, the petitioner participated in the said Execution case after its restoration.

The direction to issue of writ of possession is a matter of course in any Execution proceeding which cannot be faulted unless serious irregularities are shown.

Ms. Saha Dutta could not demonstrate any such irregularities in the order impugned dated November 03, 2016.

C.O 586 of 2019 is devoid of any merit and is therefore, dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)