

06.04.2021
Sl. No. 34
srm

C.O. No. 495 of 2021

Madhusudan Das
Vs.
Nuruddin Md. Jahangir & Ors.

Mr. Uttiya Ray

...for the Petitioner.

This revisional application arises out of an order dated January 2, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court, Burdwn, in Misc.(P)-24 of 2020 whereby the petitioner's application dated October 6, 2020 for permission to deposit the total consideration amount of Rs.22,00,000/- in 20 instalments has been rejected. The petitioner filed an application for pre-emption on the ground of vicinage. The limitation for filing the said application is four months from the date of transfer. The petitioner filed an application under Section 9(1) of the West Bengal Land Reforms Act, 1955 for an order allowing the petitioner to deposit the consideration amount along with 10% interest in 20 instalments on the ground that during Covid situation the petitioner could not collect the full amount and thus could not file the application along with the entire deposit. The learned Court below considering the decision of the Hon'ble Apex Court in the matter of Barasat Eye Hospital & Ors. vs.

Kaustabh Mondal reported in (2019) 19 SCC 767 came to the conclusion that no discretion was left to the Court to allow the consideration money to be deposited at a later date by invocation of the provisions of Section 9 of the West Bengal Land Reforms Act, 1985.

The said order has been challenged before this Court on the ground that what fell for decision before the Hon'ble Apex Court in Barasat Eye Hospital (supra) was that when the preemptor disputed the consideration amount and thus did not file the entire consideration amount, awaiting an enquiry under Section 9 of the West Bengal Land Reforms Act, the pre-emption application could not be entertained.

According to the learned Advocate for the petitioner, the facts in this case were distinguishable, inasmuch as, in the case in hand the preemptor did not dispute the consideration amount but prayed for easy instalments.

First and foremost, the law does not provide or empower the learned court to grant instalments with regard to the deposit of the consideration amount. Moreover, the issues which have been decided by the Hon'ble Apex Court do not only cover the situation where the consideration amount is disputed but the Hon'ble Apex Court in unequivocal terms have held that the an application for preemption would not be

maintainable in the eye of law unless the entire consideration amount along with 10% of that amount as contemplated under the statute was deposited at the time of filing of the application provisions of law are.

Section 8 (1) of the Land Reforms Act provides as follows:-

“8. Right of purchase by co-sharer or contiguous tenant.- (1) If a portion or share of a [plot of land of a raiyat] is transferred to any person other than a [co-sharer of a raiyat in the plot of land], [the bargardar in the plot of land] may, within three months of the date of such transfer, or] any [co-sharer of a raiyat in the plot of land] may, within three months of the service of the notice given under sub-section (5) of the section 5, or any raiyat possessing land [adjoining such plot of and] may, within four months of the date of such transfer, apply to the [Munsif having territorial jurisdiction,] for transfer of the said portion or [share of the plot of land] to him, subject to the limit mentioned in [section 14M,] on deposit of the consideration money together with a further sum of ten per cent of that amount:”

Section 9 (1) of the land Reforms Act provides as follows:-

“9. Revenue Officer to allow the application and apportion lands in certain cases.-(1) On the deposit mentioned in sub-section (1) of section 8 being made, the Munsif shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons interested. On such notice being served, the transferee or any person interested may appear within the time specified in

the notice and prove the consideration money paid for the transfer and other sums, if any, properly paid by him in respect of the lands including any sum paid for annulling encumbrances created prior to the day of transfer, and rent or revenue, cesses or taxes for any period. The Munsif may after such enquiry as he considers necessary direct the applicant to deposit such further sum, if any, within the time specified by him and on such sum being deposited, he shall make an order that the amount of the consideration money together with such other sums as are proved to have been paid by the transferee or the person interested plus ten per cent of the consideration money be paid to the transferee or the person interested out of the money in deposit, the remainder, if any, being refunded to the applicant. The Munsif shall then make a further order that the portion or [share of the plot of land] be transferred to the applicant and on such order being made, the portion or [share of the plot of land] shall vest in the applicant."

The Hon'ble Apex Court held that the pre-requisite to even endeavour to exercise this weak right was to deposit the entire sale consideration along with 10% on that consideration, as otherwise, Section 8(1) of the said Act would not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose. While dealing with the provisions of Section 9, the Hon'ble Apex Court held that only when the amount is deposited under Section 8, an enquiry by the Munsif under Section 9 would be the next stage. The enquiry, according to the Hon'ble Apex Court, was in respect of the amount sought to be claimed over and above, the stated sale

consideration in the documents of sale. Even if the preemptor raised a doubt with regard to the consideration money, an enquiry into the above aspect could only be done upon payment of the full amount along with the application and the phrase remainder, if any, being refunded to the preemptor, would include to mean the repayment of the initial deposit made if considered to be excess.

The Hon'ble Apex Court held that it was a settled rule of construction that legislative provisions should be read in their plain grammatical connotation and only in the case of conflicts between different provisions, would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule was made superfluous. The Hon'ble Supreme Court was of the view that giving a discretion to the preemptor to file an application for preemption without deposit of the full consideration would give rise to speculative litigation. Depositing a smaller amount, could drag on the issue and the vendee would not be able to exercise his right acquired in pursuance of a valid sale deed. The Hon'ble Apex Court held that there could not be any order extending the time to deposit the consideration amount even by taking recourse to the provisions of the limitation Act.

Therefore, the prayer of the learned Advocate for the petitioner that the time for depositing the entire consideration money could be extended by way of granting easy instalments in view of the orders of the Hon'ble Apex Court with regard to extension of the limitation during covid times is not accepted. The law has been settled the Hon'ble Apex Court. An application for preemption could not at all be filed without depositing the entire consideration money along with 10%. If such extension and payment by instalment is allowed, as urged by the learned Advocate for the petitioner, the same would be contrary to the decision in Barasat Eye Hospital (Supra) and also contrary to the provisions of Section 8(1) of the Act of 1955 as laid down by the Hon'ble Apex Court. Section 9 of the Act of 1955 also does not empower the learned court to pass orders for depositing the amount through instalments.

Under such circumstances, I do not find any reason to interfere with the order of the learned Court below. The relevant portion of the decision of the Barasat Eye Hospital (supra) is set out below for convenience:

"29...It cannot be said that a discretion can be left to the preemptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of preemption. The full amount has to be deposited.

...31. We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give right to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising right in pursuance of the valid sale deed executed.....

...34. As we have discussed above, once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is sacrosanct. The two go hand in hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited within the time meant for the exercise of the right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right.....”

The prayer for easy instalments would amount to allowing the pre-emptor to deposit the consideration amount way beyond the period of limitation of four months which will be inconsistent with the decision of the Hon'ble Apex Court.

The revisional application is dismissed.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)