

S/L 23
18.03.2021
Court. No. 19
GB

C.O. 589 of 2021

Sri Ranjan Banerjee
Vs.
Archana Sarkar & Anr.

(Through Video Conference)

*Mr. Probal Kumar Mukherjee,
Mr. Sukanta Chakrabarty,
Mr. Anindya Halder*

...for the Petitioner.

*Mr. Arnab Roy,
Mr. Satyam Mukherjee,
Mr. Soumyadeep Mukherjee.*

...for the Opposite Party No.1.

This revisional application arises out of an order dated March 3, 2021 passed by the learned Civil Judge (Senior Division), Kakdwip in Miscellaneous Case No.3 of 2021 arising out of Title Execution Case No.5 of 2018.

The learned court below refused to pass an order staying the execution proceeding at the behest of the petitioner, who claims to be the owner of the suit property by purchase and in possession thereof.

It is the contention of Mr. Mukherjee, learned senior advocate appearing on behalf of the petitioner that the learned court could not have rejected the application for stay on the ground that the petitioner did not have a *prima facie* case to maintain such an application under the provisions of Section 47 of the Code of Civil Procedure. The learned court

came to a finding that the purchaser of the property in question was not a party to the decree and as such, the application under Section 47 of the Code of Civil Procedure was not prima facie maintainable at the instance of the petitioner. The prayer for stay of the execution proceeding was refused.

For convenience, the provisions of Section 47 of the Code of Civil Procedure is quoted below:

“47. Question to be determined by the Court executing decree.-(1) All question arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.”

It appears that under Section 43(3) of the Code of Civil Procedure, the learned court below is empowered to determine whether a person is a representative of a party. It is also settled law that purchasers of a property could also

maintain an application under Section 47 of the Code of Civil Procedure.

Whether the petitioner is a representative of the judgment debtor is a matter to be decided by the learned court below in terms of Section 47(3) of the Code of Civil Procedure. Without such adjudication, the court cannot come to a finding that the petitioner was not a representative. On the other hand, if application under Section 47 of the Code of Civil Procedure is kept for adjudication and the execution case continues, then the entire exercise of the petitioner in having filed the application will be in futility and the application under Section 47 of the Code of Civil Procedure will become infructuous without any decision on merits.

It is also settled law that transferee *pendente lite* is a representative. However, whether the petitioner is covered by the expression “representative” or not will have to be adjudicated on evidence, on the facts of the case, that may be put forward by the respective parties.

Under such circumstances, this revisional application is disposed of by setting aside the order impugned. The learned court below shall decide the application under Section 47 of the Code of Civil Procedure along with the point of maintainability upon allowing the parties to adduce evidence, within two months from date of communication of this order.

The opposite parties shall file their written objection to the application under Section 47 of the Code of Civil Procedure within ten days from date.

Till the disposal of the application under Section 47 of the Code of Civil Procedure, the Execution Case No.5 of 2018 pending before the learned Civil Judge (Senior Division), Kakdwip shall remain stayed.

This Court has not gone into the merits of the contentions of the petitioner and the observations made hereinabove, are only for the purpose of disposal of the revisional application. The learned court below shall hear out the matter on its own merits.

The revisional application is disposed of.

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.)