

16.11.2021
Item No.01
Court No.18
AJ.

C.O. 1461 of 2021
(Via Video Conference)

Amitava Mitter & Ors.
-Vs-
M/s. Neelam & Ors.

Mr. Surajit Nath Mitra, Sr. Adv.,
Mr. Arindam Banerjee,
Mr. Soumabho Ghose,
Ms. Tiana Bhattacharya,
Mr. Soumalya Ganguli.
.....for the petitioners.

Mr. Ashok Kumar Banerjee, Sr. Adv.,
Mr. Sovan Mukherjee.
.....for the opposite party no.1.

Mr. Probal Kumar Mukherjee, Sr. Adv.,
Mr. Sabyasachi Sen,
Mr. Anirban Kar,
Mr. Pramit Kumar Shee.
.....for the opposite party no.2.

The predecessors-in-interest of the petitioners filed an eviction suit way back in the year 1979. The said suit was ultimately decreed on June 10, 2009. The said decree was put into execution giving rise to Execution Case No. 59 of 2009 before the learned Judge, 5th Bench, Small Causes Court, Calcutta.

The opposite party no.1/judgment-debtor aggrieved by the said decree preferred an appeal being Title Appeal No. 41 of 2009.

In the said appeal, the occupational charge for grant of stay of further proceedings of the aforesaid execution case was fixed @ Rs.2 lakhs per month. The judgment-debtor is not paying the

said occupational charge, however, the said appeal is pending.

In the meantime, the opposite party nos. 2 to 6 have filed an application in the said execution case under Order XXI Rules 98 & 101 read with Section 151 of the Code of Civil Procedure praying determination of their independent right of tenancy over the suit property. The reliefs sought for in the said application are quoted below:-

“(a) Declaration that petitioners have independent right of tenancy over the schedule property;

(b) Declaration that decree passed by the Learned 5th Judge in Ejectment Suit No. 784 of 2000 (Sri Amitava Mitter and Others vs M/s. Neelam) on June 10, 2009 is not binding and enforceable as against the petitioners;

(c) Injunction restraining the opposite party No.1, 2, 3 from executing the decree passed in Ejectment Suit No. 784 of 2000 on June 10, 2009 and from further proceeding with the Ejectment Execution;

(d) Pass an order of stay, staying all proceedings and/or further proceeding connected with and/or arising out of Ejectment Suit No. 784/2000 and execution case No. 59 of 2009 till disposal of this application;

(e) Such other order or orders as the Learned Court may deem fit and proper.”

The said application has been registered in the said execution case as Misc. Case No. 198 of 2017.

The petitioners have filed the present application under Article 227 of the Constitution of India complaining inordinate delay in disposal of the said Misc. Case.

Mr. Surajit Nath Mitra, learned senior counsel appearing on behalf of the petitioners submits that the pendency of the said misc. case is arresting the further progress of the execution case. He draws my attention to the order dated November 16, 2018 passed by the Co-ordinate Bench of this Court in C.O. 3436 of 2018.

The executing Court by the aforesaid order was directed to dispose of the said misc. case within four weeks from the date of communication of the said order. The operative part of the said order is quoted below:-

“Accordingly, C.O. 3436 of 2018 is disposed of by directing the Judge, Fifth Bench, Small Causes Court at Calcutta to dispose of Miscellaneous Case No. 198 of 2017, pending in the said court, as expeditiously as possible, without granting any unnecessary adjournment to either side, positively within four

weeks from the date of communication of this order to the executing court.”

It is disturbing to note that in spite of communication of the said direction, the said misc. case has not yet been disposed of.

It appears from the said application under Order XXI Rules 98 & 101 read with Section 151 of the Code that the said opposite parties are tracing their alleged independent right of tenancy over the suit property through one Kishan Lal Pugalia. The relevant averment in support of such claim at paragraph 7 of the said application is quoted below:-

“7. Your petitioners state that the said Kishan Lal Pugalia died intestate on 20.04.2007 leaving behind him, surviving as his natural and legal heirs, his widow namely Saroj Devi Pugalia, being the petitioner No.1 herein and the two sons namely Kamal Pugalia the petitioner No.2 herein, Lalit Pugalia the petitioner no.3 herein and two daughters namely Bina Mundhra, the petitioner no.4 herein and Neelam Bagri, the petitioner no.5 herein. A copy of the death Certificate of Kishan Lal Pugalia is annexed hereto and marked with the Letter – “D”. ”

Aforesaid being the basis of the said independent claim of the said opposite parties in the said misc. case, a question cropped up as to

whether the said opposite parties are entitled to a declaration of their right of tenancy over the suit property in view of the restrictive definition of 'tenant' under Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

It is necessary to note that Saroj Devi Pugalia, the widow of the predecessor-in-interest of the applicant, the alleged original tenant Kishan Lal Pugalia has already died.

The pendency of the said misc. case is obstructing the execution of the decree, as such, the executing Court is obliged to decide the maintainability of the said misc. case immediately.

The Executing Court in deciding the said issue shall only consider the statements made in paragraphs 7, 8 and 33 of the said application under Order XXI Rules 98 & 101 read with Section 151 of the Code.

This Court is informed by the learned counsel for the parties that December 01, 2021 is the next date fixed for hearing of the said misc. case.

The Executing Court shall take up the said issue for consideration on the said date and shall decide it within seven days from the said date on the basis of the observations made hereinabove.

The Executing Court, depending upon the outcome of the said application and keeping in view the earlier direction passed by the Coordinate Bench of this Court, shall make all endeavour to dispose of the execution case in accordance with law within four available effective working months of the said Court from the date of disposal of the said misc. case and in doing so shall not grant any unnecessary adjournment to either of the parties.

C.O 1461 of 2021 is disposed of with the above terms without any 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.)