

05. 10.12.2021
Ct. No.21
A.B.

C.O. 2122 of 2021

Prem Kumar Sharma

-Versus-

Sri Sankar Lal Saha & Ors.

(Through Video Conference)

Mr. Sambhunath Ray
Mr. Nand Kumar Singh
Ms. Amrita Tiwari

...for the Petitioner.

The petitioner/Judgment Debtor being aggrieved by order passed by the Ld. Judge, Presidency Small Causes Court, 5th Bench, in Misc. Case No. 121 of 2015 under order 21 rule 97 Civil Procedure Code arising out of Ejectment Execution Case No. 203 of 2004 on 01.10.19 and has preferred the present revisional application praying for setting aside the impugned order and for stay of the said order till disposal of Misc. Appeal no. 19 of 2020 pending in the Court of learned Chief Judge, City Civil Court, Calcutta.

I find present revisional application being filed on 6th December, 2021 challenging the order dated 01.10.2019 and without being supported by any petition under limitation Act for condonation of delay in filing the application beyond 90 days of the passing of the order.

Moreover, the apparently it is seen against the impugned order the petitioner has already filed a Misc. Appeal No. 19 of 2020 before the learned Chief Judge, City Civil Court at Calcutta. If that be so the present revisional application is not maintainable.

That apart that no revision lies against impugned order passed under Order XXI Rule 97CPC. An order passed under Order XXI Rule 97CPC is considered to be a deemed decree and against which only Appeal lies. On conjointly reading the Provisions of Order XXI Rule 97 with Order XXI Rule 101, Order XXI Rule 98 and Order XXI Rule 103 Civil Procedure Code, it is seen order of removal of obstruction is said to be passed under Order XXI Rule 98 sub rule (2) while determining a question under Order XXI Rule 101 in respect of an application Order XXI Rule 97. Therefore, an order of removal obstruction with the help of police and recovery of possession thereof is a deemed decree under Order XXI Rule 103 CPC. Hence, this court is of view only remedy available to the petitioner/ Judgment debtors is to prefer an Appeal before an appropriate appellate court against such deemed decree and as such no Revision is maintainable against the impugned order.

Accordingly, C.O. 2122 of 2021 is dismissed with cost of Rs. 5000/- payable in the account of State Legal Services Authority.

Interim order, if any, stands vacated.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)