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24.08.2021
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**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 4354 of 2019

Bhaskar Sabui
Vs.
Debashis Bose & Anr.

Mr. Ayan Banerjee,
Mr. Suman Banerjee
...for the petitioner

Mr. Ankit Agarwala,
Ms. Alotriya Mukherjee
...for the opposite parties

Affidavit-of-service filed in Court today be kept on record.

By virtue of the impugned order, the petitioner's second application under Order I Rule 10 of the Code of Civil Procedure for addition of certain persons alleged to be subsequent purchasers of a portion of the property, in respect of which the agreement, regarding which specific performance is sought in the suit, was executed.

Learned counsel for the petitioner argues that although a previous application of the petitioner under the same provision was rejected earlier, the merits of the matter were not gone into in such earlier order. As such, it is contended, there was

no bar for the trial court to take up the second application and deciding it on its own merit.

That apart, learned counsel submits that the finding in the impugned order, that the names in the sale deed produced by the plaintiff/petitioner, do not tally with the persons sought to be added, is perverse. It is submitted that it will be apparent from the relevant sale deeds that only the transferees were sought to be added as parties.

Learned counsel appearing for the defendants/opposite parties counters the submissions of the petitioner and contends that, in view of the petitioner having failed to take any step for restoration of the earlier application under Order I Rule 10 of the Code, the order of rejection of the said application precludes the petitioner from filing the second application.

That apart, it is contended that the copies of the sale deed handed over by the petitioner do not indicate that, apart from one of the documents, any other deed was executed in respect of the other proposed added defendants in respect of the second floor of the property, although the agreement-in-question, specific performance of which has been sought, was only in respect of

transfer of the second floor in favour of the petitioner.

Such contentions are controverted in reply by learned counsel appearing for the petitioner.

It is evident from Order No. 25 dated January 12, 2018 that, on repeated calls, the plaintiff went unrepresented when the previous application in the same tune and under the same provision of law was called on for hearing. As such, the previous application was rejected as “not moved”, tantamounting to a dismissal for default. Although Order IX of the Code of Civil Procedure is not applicable strictly, since the said provision pertains to suits and not interlocutory applications, the principle incorporated therein ought to be invoked in the present case as well as, otherwise, there would be unnecessary multiplicity of proceedings and forum shopping and there will not be any end to litigation.

It is well-settled that the court or one of the parties cannot be vexed twice on the same cause of action. Such principle also governs interlocutory applications, since a contrary view would create an absurdity and would come in the way of culmination of any litigation at all. Hence, the impugned order is justified on the first score.

That apart, it is doubtful as to whether the proposed added defendants were all actual transferees in respect of the property covered by the agreement-in-question, as it appears from the photocopies of their transfer deeds produced in court. Hence, the second ground of refusal of the application filed by the petitioner was also justified, inasmuch as all the proposed added defendants might not have been transferees of the second floor, to which the petitioner's actionable claim for specific performance is restricted as per the agreement-in-question.

As such, since there is no irregularity and/or illegality in exercise of judicial discretion by the trial court in passing the impugned order, there is no scope of interference therewith.

Accordingly, C.O. No. 4354 of 2019 is dismissed on contest, thereby affirming Order No. 27 dated May 04, 2018 passed by the Civil Judge (Senior Division) at Chandernagore, District-Hooghly in Title Suit No. 767 of 2017.

It is made clear that this order and/or the impugned order shall not prevent the petitioner from taking appropriate steps for restoration of the earlier application under Order I Rule 10 of the Code of Civil Procedure, filed by the

plaintiff/petitioner in the court below, in accordance with law and subject to limitation.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)