

08.02.2022
Ct. 21
D/L 3
AKG

C.O. 152 of 2022
(Via Video Conference)

Paritosh Roy @ Paritosh Kumar Roy
-Vs-
Tarun Kanti Sarkar & Ors.

Mr. Anirban Mitra,
Mr. Amit Halder,
Md. Wasim Akram,

... for the petitioner

Mr. Arnab Mukherjee,
Mr. Sandipan Mitra,

...for the opposite party no. 1 and 2

Mr. B.K. Banerjee,
Ms. Priyanka Jana,

...for the opposite party no. 3

The Judgement Debtors being aggrieved by the order of issue of writ of possession with the help of court bailiff and police personnel by the learned Civil Judge (Junior Division), 1st Court, Basirhat in Title Execution No. 5 of 1992 on 05.01.2022, has filed the present application under Article 227 of the Constitution of India.

The facts giving rise to the present revisional application in gist is that opposite party no. 1 and 2 being the owners of the scheduled property had

inducted the Judgement Debtors as a licensee have filed Title Suit No. 32 of 1987 for recovery of the disputed licensed property on revocation of license. That opposite party no. 1 and 2 was successful in obtaining a decree against the present petitioner on 31.10.1990. They put such decree into execution by filling Title Execution case no. 5 of 1992.

In the meantime petitioner being the Judgement Debtors preferred an appeal against the decree dated 31.10.1990 being Title Appeal No. 322 of 1990. The Appellate Court remanded the case on 25.04.1994. The learned Trial Court once again decreed the suit in favour of the opposite parties no. 1 and 2 on 31.03.1997. Once again the JDR preferred Title Appeal being no. 29 of 1997, but the appeal was dismissed by the Appellate Court on 29.11.2000.

Being aggrieved by the order of Appellate Court dated 29.11.2000, the present petitioner preferred an appeal before the Hon'ble High Court being S.A.T. No. 918 of 2001, but such appeal was also summarily dismissed on 29.09.2001. Then the JDR moved the Hon'ble Supreme Court in S.L.P. and which was also summarily dismissed on 05.12.2002.

Then the learned Executing Court as well as the Decree Holder proceeded with the Title Execution case no. 5 of 1992 after the decree of eviction against the petitioner has attained its finality. The learned Court below put the decree into execution through Nazir of the Court, but as per the report of the Nazir dated 28.08.2007, he could not execute the writ of possession due to resistance put by the JDR/the present petitioner. Then invoking the provision of Order 21 Rule 97 the decree holders have prayed for police help to recover the possession of the disputed property on 25.09.2007 and which was allowed by the learned Court below by passing the impugned order on 05.01.2022 i.e. after the lapse of 15 years of filing of the application.

Now by filling the present revisional application the JDR has alleged a petition under Order 21 Rule 97 of C.P.C. need to be registered as a Misc. Case under Rule 776 of the Civil Rules and Orders volume 1. Opportunity should have been given to the JDR to file written objection and which the Court below has failed to do so. That in order to dispose of such Misc. Case the Court below ought to have examined the Court Bailiff who has

reported resistance by the JDR at the time of execution of the decree and also witnesses. The learned Court below without following this procedure allowed the application under Order 21 Rule 97 filed by the decree holder.

Therefore, it has been contended that the impugned order is illegal and liable to be dismissed. Learned Advocate for the petitioner in support of such contention referred to *Alok Kumar Bohidar & Anr. Vs. Rajkishore Mathur & Anr. Reported in 96 (2003) CLT 39 and Gaya Nath Ghose vs. Amulya Chandra Sarkar & Anr. reported in Air 1957 CAL 252.*

On the other hand learned Advocate for the decree holders/opposite parties submitted that opposite parties have obtained decree of eviction initially on 31.10.1990 and later on 31.03.1997. The decree dated 31.03.1997 has reached its finality as the same stands affirmed by the Hon'ble Supreme Court as appeal filed by the JDR before this Hon'ble Court and as well as before the Hon'ble Supreme stands dismissed summarily. He in support of such contention referred to *Smt. Bandana Das & Anr. Vs. Saroj Kumar Das reported AIR 2009 CAL 82 and Subol Chandra Dutta & Ors.*

Vs. Chimai Charan Nandy & Ors reported in AIR 1980 CAL 126.

Perused the record and materials therein and from where it appears the decree which has reached its finality could not be executed even after lapse of 35 years of passing of the decree. It also appears the application which the decree holder had filed for police help under Order 21 Rule 97 of Civil Procedure Code in the year 2007 was finally disposed of vide impugned order passed in 2022.

It is true the court below ought to have registered the application for police help as a Misc. Case even if the decree holder has failed to file the same as a Misc. Case as provided under order 776 of CRO and ought to have examined the Court Bailiff who had reported resistance by the JDR at the time of execution of the decree and also witnesses. The learned Court below without following this procedure has allowed the application under Order 21 Rule 97 filed by the decree holder on 27.07.2004.

Here, this Court is of view a litigant cannot be made suffer due to the fault and fallacy of Court. It also appears from the record that the present petitioner/JDR who was taking active part in the

Execution Proceeding also did not bother to bring to the notice of the Court about the technical error for not getting the application under Order 21 Rule 97 of Civil Procedure Code registered as a Misc. Case since 2007 and has challenged the procedural defect committed by the learned Court below after the DHR was granted police help to get the decree executed.

Further, in view of the fact the eviction decree which has reached its finality and as per decree the JDR is bound to deliver the possession of the disputed premises to the opposite parties. But instead the JDR is continuing with the possession as an unauthorized occupier and that too without paying any charges as per record for more than 35 years.

Therefore, this Court is of view a decree holders cannot be made to suffer for technical defect in the proceeding under Order 21 Rule 97 of Civil Procedure Code. That the decree remains unchallenged. The JDR is bound to deliver the possession as per the decree dated 31.03.1997. That even after lapse of 25 years the decree holders is unable to enjoy the fruits of the decree.

Therefore, this court does not find any merit in the revisional application and reason to interfere with the order impugned. Thus, the revisional application stands dismissed.

Accordingly **C.O. 152 of 2022 stands dismissed.**

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited.

Allegations made shall be deemed to be denied. There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)