

S/L 55
14.12.2022
Court. No. 12
Sourav

CO 118 of 2021

**Greka (Zhengzhou) Technical Services
Company Limited
Vs.
Pethopath Fluids (India)
Private Limited & Ors.**

*Mr. Subhabrata Datta
Mr. Aranya Saha*

...for the Petitioner.

*Mr. Biswajib Ghosh
Mr. Sumitava Chakraborty*

...for the opposite party no. 1.

Mr. Debnath Ganguly

...for the opposite party no. 2.

*Mr. Shashwat Nayak
Mr. Aditya Garodia
Mr. Rajdeep Mantha*

*...for the applicant
in CAN 4 of 2021 & CAN 5 of 2021.*

All the parties to the instant revisional application are represented by their respective learned advocates.

The affidavit-in-opposition and the affidavit-in-reply as filed on behalf of the opposite party no. 1 and the petitioner be kept with the record.

Heard learned advocates for the parties at length.

In the instant revisional application, Order No. 42 dated 12.01.2021 as passed by the Civil Judge (Senior Division), Durgapur has been assailed. By the impugned order, learned trial Court refused to allow the prayer for stay as filed in Misc. Case No. 3 of 2021 arising out of Money

Execution Case No. 81 of 2017 as filed by the 3rd party who is the petitioner before this Court.

It is submitted on behalf of the petitioner that after putting a favourable arbitral award into execution i.e., Money Execution Case No. 1 of 2021 before the learned Executing Court, it has come to the knowledge of the present petitioner that another Money Execution Case No. 81 of 2017 has been filed by the present opposite party no. 1 against the self-same judgment debtor praying for attachment and sale of three rigs of which according to the petitioner, he is the owner.

Finding no other alternative, the petitioner before this Court thus filed Misc. Case No. 3 of 2021 under Order 21 Rule 101 of the Code of Civil Procedure in the said Money Execution Case No. 81 of 2017 claiming adjudication of its right, title and interest over the aforesaid three rigs which is the subject matter of the Money Execution Case No. 81 of 2017.

It is submitted that in Misc. Case No. 3 of 2021, a prayer for stay was made before the learned Executing Court but by the impugned order learned Executing Court refused to pass the order of stay as prayed for. It is contended before this Court on behalf of the petitioner that in the event the stay as prayed for is not granted, Money Execution Case No. 81 of 2017 will proceed and in that event the Misc. Case No. 3 of 2021 as filed under Order 21 Rule 101 CPC would become infructuous and consequently, the Execution Case as

filed by the present petitioner being Money Execution Case No. 1 of 2021 would also become infructuous. It is thus submitted that the present revisional application may be allowed by setting aside the impugned order.

Learned advocate for the opposite party no. 1, however, opposes such contention. It is argued that there is no justifiable reason to interfere with the impugned order since in the arbitral award wherefrom Money Execution Case No. 81 of 2017 arose, the present opposite party no. 1's claim over the properties to be attached has been established.

In support of the applications under CAN 4 of 2021 and CAN 5 of 2021, learned advocate for the intending added parties submits before this Court that because of the impugned order and subsequent stay orders as passed by this Court in the present proceeding i.e., in CO 118 of 2021, he is unable to withdraw the Title Suit No. 66 of 2018 since his dispute as against the judgment debtor has already been settled.

This Court has perused the entire materials as placed before this Court. This Court has also given its due consideration over the submissions of the learned advocates of all the parties including the learned advocate for the judgment debtor. In considered view of this Court, learned trial Court is not at all justified in refusing to grant stay of all further proceeding of Money Execution Case No. 81 of 2017 till disposal of Misc. Case No. 3 of 2021 as prayed for by the petitioner in a proceeding under Order 21 Rule 101 of the

Code of Civil Procedure especially when the present petitioner claimed his independent right, title and interest over three rigs which is the subject matter of Money Execution Case No. 81 of 2017 as filed by the opposite party no. 1 herein.

In view of such, the instant revisional application is hereby allowed. As a result, the impugned order No. 42 dated 12.01.2021 as passed by the Civil Judge (Senior Division), Durgapur is hereby set aside. Let there be a stay of all further proceeding of Money Execution case No. 81 of 2017 till the disposal of the Misc. Case No. 3 of 2021.

Learned trial Court is hereby directed to dispose of the Misc. Case No. 3 of 2021 as filed by the petitioner under Order 21 Rule 101 CPC by trial on evidence on day to day basis without granting unnecessary adjournments to either of the parties.

It is further directed that the Misc. Case No. 3 of 2021 shall have to be disposed of by the learned Executing Court within a period of six months from the date of communication of this order.

Liberty is given to the plaintiff of Title Suit No. 66 of 2018 to withdraw the said suit if the plaintiff of the said suit so desires.

With the disposal of the instant revisional application, all interim applications as pending before this Bench are disposed of accordingly.

It is, however, made clear that the observation as made by this Court is purely limited for the disposal of the instant revisional application and the same will not touch the merits of Money Execution Case No. 81 of 2017 as well as Misc. Case No. 3 of 2021 and, thus, all the points as involved in the aforementioned Misc. case and Money Execution Case are thus kept open.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)