

29.09.2022
Item No.14
BR
Ct.42

CRR 411 of 2022
With
CRAN 2 of 2022, CRAN 4 of 2022

Ram Mohan Pal
Vs.
The State of West Bengal & Anr.

Mr. Sourav Chatterjee
Ms. Moumita Ghosh
...for the petitioner

Mr. Joydeep Roy
Ms. Sujata Das for the State

Mr. Anjan Banerjee ... for the O.P. No. 2

The petitioner is a co-sharer of M/s. Lakshinath Rice Mill situated at village Radhapur, within P.S. Shyampur, District-Howrah. So is the opposite party no. 2 in a suit for dissolution of partnership and accounts being Title Suit No. 20 of 1997, share of the parties were declared and the suit was initially decreed in preliminary form.

In T.S. No. 20 of 1997 the share of the petitioner as a partner of partnership firm, namely M/s. Lakshinath Rice Mill was declared of having one anna share, Gandhi Brothers have 11 annas shares, Samanta Brothers have 2 annas share and Sautia

brothers have two annas shares. It is also declared that the partners have no personal right to use and occupy the firm's property.

The said decree admittedly becomes final.

Subsequently on the allegation that the opposite party no. 2 was raising an unauthorized construction on the property belonging to the said partnership firm, the petitioner filed an application under Section 144 (2) of the Code of Criminal Procedure before the jurisdictional Executive Magistrate. The learned Magistrate passed the following order :

" Order dated : 25.01.2022

Seen the petition. Heard the learned advocate for the petitioner.

O.C., Shyampur PS is directed to comply the Decree dated 14-03-2001 of Ld. Civil Judge (Sr. Division), 1st Court, Howrah vide TS No. 20 of 1997 and send the compliance report to this Court within next date of hearing.

No illegal activity will be entertained over the suit plot of land and peace be maintained by all concerned.

Accordingly, O.C., Shyampur PS is further directed to ensure for maintenance of law and order over the suit area.

To date : 14.04.2022"

On 25th January ,2022 in the said case under Sections 144 (2) of the Cr. P.C. which was registered as Misc. case no. 81 of 2028. Being aggrieved , the opposite party no. 2 preferred a revisional application before the learned Additional Sessions Judge, 1st Court at Uluberia. The said revision was registered as criminal revision No. 3 of 2022 . The said revision came up for admission hearing before the learned Additional Sessions Judge, 1st Court at Uluberia. On 1st February, 2022 when the revision was admitted fixing 22nd March, 2022 for appearance, SR and AD and filing postal receipt and further order. Subsequently, on 3rd February, 2022 , when there is no date in the said revisional application , the opposite party no. 2 filed the put up petition and the on the basis of the said petition the record of criminal revision case No. 3 of 2022 was placed before the learned Additional Sessions Judge and the learned Additional Sessions Judge without serving any notice upon the opposite party passed an order of stay of operation of the impugned order dated 25th January, 2022 passed by the learned Executive Magistrate in Misc. Case No. 81 of 2022till 22nd March, 2022.

The above order is assailed in the instant revision.

It is contended on behalf of the opposite party no. 2 that undisputedly the opposite party no. 2 is one of the share holders of said partnership business having

two annas share thereon even assuming that the opposite party no. 2 has been making construction on the land belonging to the partnership firm, being a co-sharer he cannot be restrained by other co-sharer in raising such construction. It is also submitted by him that the impugned order dated 25th January, 2022 has lost its force because statutory period of limitation of 60 days has been expired and the said order cannot be said to be in force.

Sitting in criminal revisional jurisdiction, I refrain myself from making any discussion on sharer powers and authority to be favoured with an order of injunction in certain circumstance when a joint property is illegally encumbered by other co-sharer. It is absolutely civil Court's jurisdiction to answer the issue.

In the instant revision the Court is called upon to consider the legality, validity and propriety of the order dated 3rd February, 2022 passed by the Additional Sessions Judge, 1st Court at Uluberia. On perusal of the impugned order passed in criminal revision no. 3 of 2022 this Court is concerned to note its unhappiness after considering the fact and circumstances in which the said order was passed. The revisional application was filed before the learned Additional Sessions Judge on 1st February, 2022. The learned Judge admitted the said revision and fixed 22nd March, 2022 as the next

returnable date. At the initial stage, the opposite party no. 2 did not pray for any order of stay of operation of the order dated 25th January, 2022 passed by the learned Executive Magistrate in Misc. case No. 81 of 2022. Immediately after two days a put up petition was filed. The said application was allowed and on the basis of the submission made on behalf of the opposite party no. 2 an ex parte order was granted by the learned Sessions Judge. The learned Additional Sessions Judge, 1st Court at Uluberia did not even consider as to whether a notice is required to be served upon the present petitioner, therefore, this Court is of the considered view that the impugned order dated 3rd February, 2022 cannot be sustained.

Accordingly, the order dated 3rd February, 2022 passed in criminal revision Case No. 3 of 2022 by the learned Additional Sessions Judge, 1st Court at Uluberia is set aside.

The learned Judge is directed to hear out the criminal revision case No. 3 of 2022 afresh. Since the petitioner has challenged the said order dated 3rd February, 2022. It is made clear that no notice of criminal revision case no. 3 of 2022 is required to be served upon the present petitioner.

It is made clear that this Court has not decided as to whether the impugned order dated 25th January,

2022 remains in force or not. This Court has also not decided the conflicting rights of the co-sharer in revision to the property owned by a partnership firm whether the parties are the partners. The learned trial Judge is at liberty to decide also such issues while disposing of criminal revision case no. 3 of 2022 without being influence in any way with the judgment passed by this Court while disposing of the instant revision.

With this observation the instant revision is disposed of giving opportunity of hearing to both the parties. Connected applications are also disposed of.

(Bibek Chaudhuri, J.)