

10-06-2022
Item no.37
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.727 of 2022
Sri Chaitanya Deb Samanta
-vs-
West Bengal State Electricity Distribution Company
Limited & Ors.

Mr. Dyutiman Banerjee ...for the petitioner

Mr. S.S. Koley ...for WEBSSEDCL

The instant revision arises out of an application under section 24 of the Code of Civil Procedure, 1908 seeking transfer of a execution case from the court of learned Additional District Judge, Arambagh, Hooghly to the court of learned Civil Judge (Senior Division), Arambagh.

The petitioner as a plaintiff filed a suit being Title Suit No.31 of 2004 in the court of learned Civil Judge (Senior Division), Arambagh seeking recovery of a sum of Rs.87,048/-. By a judgement dated January 29, 2007, learned trial court dismissed the suit of the petitioner. Being aggrieved by such judgement of dismissal, the petitioner preferred an appeal being Title Appeal No.12 of 2007 before the court of learned Additional District Judge, Arambagh. The appeal of the petitioner was allowed and the suit was decreed in favour of him.

The petitioner submits that he put the decree in execution in the court of learned Additional District Judge at Arambagh and the execution proceeding was numbered as Execution Case No.02 of 2017. The opposite parties in the execution case filed an objection under section 47 CPC which has been registered as Misc. Case No.10 of 2017. It is submitted that the aforesaid execution case was filed

before learned first appellate court erroneously. Hence, the prayer.

Learned counsel for the petitioner submits that owing to bona fide mistake on the part of learned counsel for the petitioner-plaintiff, the execution case was filed in the court of learned Additional District Judge, Arambagh, instead of filing the same in the court of learned Civil Judge (Senior Division). Learned counsel submits that more than five years have elapsed since the execution case was filed. In such context, for the interest of justice, the execution case and the Misc. case should be transferred to the competent executing court.

Per contra, learned counsel for the opposite parties submits that the petitioner ought to have withdrawn the execution case and filed the same in the competent court afresh.

What I find, the trial court where the suit was filed is the court of learned Civil Judge (Senior Division). It is trite to say that the execution case should have been filed in the original trial court wherefrom the suit was originated.

Here, it is noticed that due to mistake either on the part of learned advocate appearing for the plaintiff before learned court below or the plaintiff himself, the execution case was filed in the wrong forum, that is in the first appellate court. The opposite parties filed an objection under section 47 CPC which has been registered as Misc. case No.10 of 2017.

Having heard learned counsels appearing for the parties and bearing in mind the interest of justice, I think that the aforesaid execution case and the Misc. case should be withdrawn and transferred to the court of learned Civil Judge (Senior Division), Arambagh.

In view of the above, the revisional application is allowed on contest.

Let Title Execution Case No.02 of 2017 and the Misc. Case No.10 of 2017 arising out of Title Execution Case pending in the court of learned Additional District Judge, Arambagh be withdrawn and the proceedings be transferred to the court of learned Civil Judge (Senior Division), Arambagh for disposal.

Learned Additional District Judge, Arambagh is directed to transmit the case records of the aforesaid proceedings to learned Civil Judge (Senior Division), Arambagh immediately after receipt of a copy of this order.

Learned executing court, that is learned Civil Judge (Senior Division), Arambagh shall register the execution case and the Misc. Case afresh and proceed with both the two cases anew.

Let a copy of this order be communicated to both the courts below forthwith.

Thus, CO No.727 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]

