

16.06.2022
Item No.3
Ct. No.7
CHC
(disposed of)

C.O. 1263 of 2022

Bibekananda Samanta
Vs.
Sasadhar Bera & anr.

Mr. Tapas Kumar Bhattacharya,
Mr. Ashis Kumar Paul
...for the petitioner

Mr. Dipanjan Dutta,
Mr. Atanu Basu
...for the opposite parties

The subject-matter of challenge in this revisional application is against the order dated 6th May, 2022, passed by learned Civil Judge (Junior Division), 2nd Court, Uluberia, Howrah, in connection with Misc. Case No.21 of 2022, arising out of Title Execution No.09 of 2013, declining to grant any stay in connection with pending Execution Case (T. Ex. No.09 of 2013).

Mr. Tapas Kumar Bhattacharya, learned advocate appearing for the petitioner submits that an *ex parte* decree was sought to be executed upon inviting a Title Execution Case No.09 of 2013. The petitioner being judgement-debtor filed an application under Section 47 C.P.C., which was registered as Misc.Case No.12 of 2017.

It is submitted by learned advocate for the petitioner that for not taking steps, such Misc.Case was dismissed for default on 18th December, 2019. After the dismissal of such Misc. Case, a separate Misc.Case being No.21 of 2022 was registered on 19th April, 2022 seeking restoration of the original Misc. Case No.12 of 2017 registered under Section 47 C.P.C.

It is contended by learned advocate for the petitioner that since the *ex parte* decree, obtained in this case, was sought to be executed, an application thereafter was filed in Misc. Case No.21 of 2022 praying for restoration of original Misc. Case, which has been rejected by the court below observing therein that subsequent filing of Misc.Case being No.21 of 2022 is nothing but basically instrumental to stall the pending Execution Case.

Learned advocate for the petitioner thus contends that the rejection of the prayer for stay of Execution Proceeding has been improperly reached by court below, forgetting the existence of a Misc. Case No.21 of 2022 praying for restoration of original Misc.Case No.12 of 2017. In the event of the decree being executed, pending decision of Misc.Case No.21 of 2022, the original Misc.Case No.12 of 2017 registered under Section 47 of the C.P.C. may be frustrated.

Per contra, Mr. Dipanjan Dutta, learned advocate appearing for the opposite parties/decreed-holders submits that over the selfsame subject property, there has been previous round of litigations, initiated by the petitioner/Jdr, and after becoming unsuccessful to previous round of litigations, the petitioner has purposefully reverted back to find his avenue upon filing application for restoration of original Misc.Case No.12 of 2017.

It is further submitted by the learned advocate of the opposite parties that unless the original Misc.Case is restored, there cannot be any stay order granted in a blanket form. Thus supporting the order of the court below, learned advocate appearing for the opposite parties submits that there is nothing left to be interfered with in the impugned order.

Having considered the submission of both sides, it appears that the decree was granted in 2012, such decree was granted *ex parte* in the instant case for the non-appearance of the defendants, though the defendants filed written objection against the injunction application previously. There has been previous round of litigations over the subject-matter, and the effects of the *ex parte* decree remained undisturbed. But the significant fact is that the original Misc.Case No.12 of 2017, registered under

Section 47 C.P.C. was dismissed for default on 18th November, 2019.

That for the restoration of such Misc.Case, a separate Misc.Case, being No.21 of 2022, was thereafter filed on 19th April, 2022. There has been no adjudication reached till the date of rejection stay of Execution Proceeding, as regards the prayer for restoration of referred Misc.Case (Misc.Case No.12 of 2017).

Since original Misc.Case No.12 of 2017 was an unmerited disposal, the court below ought to have kept in his mind such fact, while making rejection of the prayer for stay, and instead of rejecting the prayer for stay, the same should have been kept pending till the decision of Misc.Case No.21 of 2022 is reached by the court below.

The revisional application is thus disposed of directing the court below to ensure expeditious disposal of Misc.Case No.21 of 2022 praying for restoration of Misc.Case No.12 of 2017, providing sufficient opportunity of hearing to either of the parties to this case, preferably within a period five (05) weeks from the date of communication of this order, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

Pending decision of Misc.Case No.21 of 2022, the Title Execution Case No.9 of 2013 be stayed subject to paying Rs.25,000/- (Rupees Twenty Five Thousand) within three (03) weeks from the date of this order by petitioner to opposite parties/judgement-debtor or its learned advocate appearing in the court below, and a receipt therefor may be produced before the court below immediately thereafter.

This would not however, prevent the Executing Court below to hear out the prayer for stay of execution proceedings in accordance with the provisions of law after the decision of Misc.Case No.21 of 2022 is reached in accordance with the law.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)