

21.07.2022
Item No.72
Ct. No.7
CHC
(disposed of)

C.O.1593 of 2022

**Kalipada Sahoo
Vs.
Sudhangsu Sahoo**

Mr. Mrinal Kanti Ghosh
...for the petitioner

The subject-matter of challenge in this revisional application is against order dated 18th May, 2022, passed by learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur, in Judicial Misc. Case No.13 of 2022, under Section 47 C.P.C. holding the Misc.Case to be maintainable filed by the Jdr/opposite party.

Learned advocate appearing for the petitioner/decreed-holder submits that the decree passed by the trial court remained affirmed up to the Second Appeal. An execution was then invited vide Execution Case No.5 of 2018, arising out of Other Suit No.195 of 2014 before the learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur. The judgement-debtor suddenly in the referred Execution Case appeared, and filed an application under Section 47 C.P.C., which was registered as Judicial Misc. Case No.13 of 2022.

The petitioner/decreed-holder filed written objection against the application under Section 47 C.P.C. together with a separate application challenging the maintainability of such Judicial Misc. Case. Learned court below by the order impugned rejected the prayer of the petitioner holding the Misc. Case to be maintainable.

Learned advocate appearing for the petitioner submits that the fruits of the decree already obtained may be made available to the decree-holder, and which should not be delayed by frivolous application being filed at the instance of the Jdr/opposite party.

The contention thus expressed by the learned advocate for the petitioner is against the delay caused in the disposal of referred Judicial Misc. Case under Section 47 C.P.C.

As per provisions available under Section 47 C.P.C. all questions relating to the Execution, discharge or satisfaction of the decree shall be determined by the court executing the decree, and not by separate suit. Filing of a petition under Section 47 C.P.C. in the referred pending Execution Case is within the statutory remedy available under Section 47 C.P.C., which should not be rejected without doing due adherence to the provisions of the law. Significantly, decree has been obtained in 2013. This has to be taken into account by the court below. At the same time, frivolous

application, if filed simply to stall the execution proceedings has to be checked with high hands. When a Judicial Misc. Case No.13 of 2022 under Section 47 C.P.C. has been registered under the provisions of the law, and in which the decree-holder has already filed written objection, this Court is of the view such Judicial Misc. Case No.13 of 2022 should be disposed of expeditiously, providing an opportunity of hearing to either of the parties to this case, preferably within a period of twelve (12) weeks from the date of communication of this order, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

It is, however, clarified that all the points raised are left open for decision by the trial court, to be agitated by the petitioner/decreed-holder at the time of final hearing of application under Section 47 C.P.C., irrespective of previous rejection of the prayer challenging the maintainability of 47 petition.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite party and his learned advocate in the court below.

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.)