

21.11.2022
Item No.6
Ct. No.7
CHC
(disposed of)

C.O.1939 of 2022

Ramdas Ghosh
Vs.
Tarit Kanti Ghosh & ors.

Mr. Abhijit Chakraborty
...for the petitioner

Mr. Tanmay Basu
...for the o.p. nos.1 to 7

Subject-matter of challenge in this case is against the order dated 1st July, 2022, passed in Title Execution Case No.10 of 2004, arising out of Title Suit No.330 of 1986 of learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas, declining to consider the prayer of the petitioner/judgmentdebtor, vide petition dated 31st May, 2022, intending to resist the execution of the decree with the assistance of the police.

Mr. Chakraborty, learned advocate appearing for the petitioner disputes with the impugned order submitting that the issue relating to nadabipatra, and *res judicata* applied by this Court in connection with appeal, preferred against the decision of the court below, could not be discussed subscribing reasons in accordance with the law. It is further contended that all the interwinged issues relatable to execution of

decree could not be decided properly by the court below, and unless such issues are decided in accordance with the law, the decree granted may not be executed at the moment.

This is a suit of 1986.

There has been two round of litigation previously even in connection with cross appeal filed by the petitioner/judgment-debtor. Both the decisions of the court below in 1st Appeal reached up to this Court in Second Appeal. Both the Second Appeals including the last Second Appeal being 73 of 2014 have already been dismissed without any admission. Against the dismissal of Second Appeal, no steps has been taken for appropriate redressal, if there be any.

The decree thus passed by the court below has already reached finality, and the nitty and gritty of the decree, other than execution, discharge and satisfaction, obviously, may not be gone into in connection with an application under Section 47 C.P.C. even.

Per contra, Mr. Tanmay Basu, learned advocate appearing for the Caveator/opposite party nos.1 to 7 disputing with the submission of petitioner submits that the executing court below has already issued writ for execution of the decree, and there is nothing to be interfered with the impugned order.

It is also contended by the opposite party nos.1 to 7 that the entire purpose of the petitioner is to cause delay to the execution proceedings.

Upon perusal of the impugned order, it appears that the court below has rejected the prayer of the judgment-debtor/petitioner, as disclosed in petition dated 31st May, 2022, subscribing sufficient reasons and even after disclosing the previous orders passed by this Court in Second Appeal. The impugned order, as such, does not call for any interference.

The revisional application stands dismissed without making any interference. The executing court below is to execute the decree expeditiously as possible, preferably before the end of December, 2022.

Parties are directed to make communication of this order to the court below.

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.)