

S/L 40
16.11.2022
Court. No. 12
Suwayan

CO 1944 of 2022

Minor Khandekar Tamanna Khatun
Daughter of Khandkar Mauddin Hossain
Vs.
Sk. Kasem Ali & Ors.

Mr. Rabindra Narayan Dutta
Mr. Sibasis Ghosh
Mr. Kare Krishna Halder
Mr. Koushik Bhattacharya
Mr. A. Mukherjee

...for the petitioner.

Affidavit-of-service as filed on behalf of the

petitioner be kept with the record.

Learned Advocate for the petitioner is present.

In spite of service none turn up on behalf of the

opposite party. In view of such, this Court proposes to

dispose of the instant revisional application in absence of

the opposite party.

Heard learned Advocate appearing for the

petitioner at length. Perused the certified copy of the

impugned order and the revisional application as filed

before this Court including its annexures.

On perusal of the entire materials as placed before

this Court it reveals that by the impugned judgment dated

16.12.2019, learned Revisional Court, i.e., learned Additional District and Sessions Judge, Kandi while allowing the Civil Revisional Case No. 1 of 2018 set aside the order No. 26 dated 05.05.2018 as passed by learned Civil Judge (Jr. Division), 1st Court, Kandi in Misc. (L.R.) Case No. 2 of 2014 thereby rejecting the respondent/petitioner's execution application under Section 151 of the Civil Procedure Code.

On perusal of the Order No. 26 dated 05.05.2018 as passed in Misc. (L.R.) Case No. 2 of 2014, it reveals that by the said order the learned executing Court, i.e., the Court of learned Civil Judge (Jr. Division), 1st Court, Kandi, Murshidabad was pleased to reject the present opposite party's three applications under Order 21 Rules 99, 100 and 101 of the Code of Civil Procedure and at the same time allowed the petition for police help as filed by the present petitioner before the said executing Court.

At the time of hearing, learned Advocate for the present revisionist draws attention of this Court to the provisions of Order 21 Rule 103 of the Code Civil

Procedure. It is argued that an order passed while disposing a petition under Order 21 rules 97, 99 and 101 of the Code Civil Procedure is to be treated as a decree and thus, the said order is appealable in nature. It is contended while passing the impugned judgment that the learned revisional court overlooked the aforesaid provision of law and thus, wrongly exercised revisional jurisdiction which he ought not to have done. It is thus, contended that since the learned revisional court exercised its jurisdiction wrongfully and, thus passed an order which is not justifiable in eye of law the instant revisional application as filed under Article 227 of the Constitution may be allowed after setting aside the impugned judgment as passed by the learned revisional court.

In considered view of this Court for effective disposal of the instant revisional application a look to the provision of Order 21 Rule 103 of the Code of Civil Procedure is necessary and the same is as under:

“103. Order to be treated as decrees:- Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.”

On bare perusal of the aforesaid provisions of law, it appears to this Court, that the legislatures in their wisdom incorporated Order 21 Rule 103 Code of Civil Procedure clearly indicating that any application which has been adjudicated under the provisions of Order 21 Rules 98 and 100 of the Code of Civil Procedure is to be treated as a decree and, therefore, an appeal has to be preferred challenging such order/orders. On perusal of the Order No. 26 dated 05.05.2018 as passed in Misc. (L.R.) Case No. 2 of 2014 by the learned Civil Judge (Jr. Division), 1st Court, Kandi, Murshidabad, it reveals that the petitions as filed by the present opposite parties under

Order 21 rule 99, 100 and 103 of the Code Civil Procedure have been rejected and, therefore, such order has to be treated as a decree and challenging that order, an appeal has got to be filed. Since before the learned revisional court, a revisional application has been preferred ignoring the correct provision of law and since the learned revisional court has disposed of the said revisional application overlooking the aforesaid provision of law, in considered view of this Court the impugned judgment as passed by the revisional court in Civil Revision Case No. 1 of 2018 cannot be sustained.

In view of the discussion made hereinabove, the instant revisional application stands hereby allowed. The impugned judgement dated 16.12.2019 as passed in Civil Revision No. 1 of 2018 by the learned Additional District Judge, Kandi, Murshidabad is set aside.

Consequently the Order No. 26 dated 05.05.2018 as passed in Misc. Case No. 02 of 214 by learned Civil Judge (Jr. Division), 1st Court, Kandi, Murshidabad is hereby affirmed.

Learned Civil Judge (Jr. Division), 1st Court, Kandi, Murshidabad is hereby directed to dispose of the execution case from which Misc. (L.R.) Case No. 2 of 2014 arose as early as possible preferably within three months from the date of communication of this order.

With the abovemention observation, the revisional application being Co 1944 of 2022 is disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)