

04.08.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.1984 of 2022

Tamalika Mazumder & ors.

Vs.

Indrani Dey & anr.

Mr. Sabyasachi Mondal,
Mr. Sayan Mukherjee
...for the petitioners

Mr. Apurba Kr. Ghosh,
Mr. Rudranil Ghosh,
Ms. Annayesa Chakraborty
...for the opposite party no.1

The petitioners assail order dated 18th June, 2022, passed by learned Civil Judge (Junior Division), 5th Court, Howrah, in Misc. Case No.17 of 1995, arising out Title Execution Case No.26 of 1991, rejecting the petition filed by the petitioners under Section 32 of the Civil Procedure Code.

Admittedly, petitioners are the judgment-debtors, and petitioners being judgment-debtors filed instant Misc.Case referred above under Section 47 C.P.C. in the year 1995.

Learned advocate appearing for the petitioners submits that evidence of private witness being P.W.2 is necessary in this case to establish the stand or averments made in application under Section 47 of C.P.C.

It is also contended by the petitioners that since the witness even after receiving summons declined to ensure his appearance, an application under Section 32 of the C.P.C. was filed thereafter, and it was rejected by the court below by the order impugned. The rejection of prayer under Section 32 of the C.P.C., according to petitioners, is illegal, and it has been so done mechanically without adhering to the facts and circumstances involved in this case.

Upon receiving copy of the application, Mr. Ghosh, learned advocate appearing for the opposite party no.1 submits that the opposite party no.1 is the decree-holder, who was favoured with the decree in the year 1991. The first appeal preferred, thereafter, failed to disturb the decision of the trial court.

It is contended by the learned advocate for the opposite party no.1 that evidence of P.W.1 was concluded on 3rd May, 2008, and in this long gap of almost more than 12 years, the petitioners have not been able to examine their required witness, upon taking required steps therefor, well in advance. The entire exercise undertaken by the petitioners is dilatory one, and harrasive also, just to frustrate the decree granted in eviction suit, learned advocate appearing for the opposite party no.1 argues.

Having considered the submission of both sides, it appears that a private witness has been sought to be

examined in this case as P.W.2. The scheme to examine witnesses required for the decision of application under Section 47 C.P.C. perhaps was contemplated, when the application under Section 47 C.P.C. was filed in the year 1995. Therefore, it is well within the knowledge of the petitioners how many witnesses, the petitioners have, who are required to be examined in this case after the evidence of P.W.1 was concluded on 3rd May, 2008, as it is evident from the impugned order. Sufficient time thereafter was passed without any justified reasons. But application under Section 47 C.P.C. cannot be attempted to be rendered as a never ending process, and it cannot be continued endlessly. However, petitioners are further given an opportunity to examine their witness or witnesses if there be any within fortnight from the date of this order, failing which, the court below will be free to dispose of Misc.Case No.17 of 1995 under Section 47 C.P.C. in accordance with the provision of the law, without extending any further latitude to the petitioners.

The impugned order is set aside directing the court below to fix a suitable date within two (02) week from this date enabling the petitioners/judgment-debtors to adduce their witness or witnesses as a special chance, otherwise, the court may proceed with the case in the manner as already mentioned hereinabove.

This Court reposes trust and confidence upon the court below that pending Misc. Case referred hereinabove may be disposed of expeditiously as possible, preferably within a period of three (03) weeks from the date of communication of this order, including the date of examination of witnesses, to be made by petitioners/judgment-debtors, if any, as per order mentioned hereinabove.

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

Petitioners are directed to make communication of this order to the learned 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.)