

15.09.2022
Item No.3
Ct. No.7
CHC
(disposed of)

C.O.2305 of 2022

Smt. Dipali Das
Vs.
Smt. Kamalarani Kundu & ors.

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee,
Mrs. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya
...for the petitioner

Mr. Surya Prosad Chattopadhyay,
Mr. Durbadal Sen,
Mr. Ankit Chatterjee
...for the opposite party no.1

Mr. Mrityunjoy Goswami,
Mr. Parikshit Goswami
...for the opposite party
nos.6 and 7

Liberty is given to learned advocate for the petitioner to correct the body of the petition at page 1 of this revisional application.

The subject-matter of challenge in this case is against the rejection of a prayer for stay, filed by the petitioner in connection with Misc. Case No.4 of 2022 under Order 9 Rule 13 of the C.P.C., arising out of Title Suit No.189 of 2011 of learned Civil Judge (Junior Division), 1st Court, Barasat, North 24 Parganas.

Mr. Mukherjee submits that an *ex parte* decree was obtained in Title Suit No.189 of 2011. Such *ex parte* decree was challenged upon filing the referred Misc. Case under Order 9 Rule 13 C.P.C. Since thereafter an

execution was levied to give effect to the decree granted by the trial court upon inviting a Title Execution Case No.18 of 2020, a prayer for stay was proposed, which was rejected by the order impugned.

It is contended by Mr. Mukherjee that unless protection is granted, the very purpose of initiation of Misc. Case under Order 9 Rule 13 C.P.C. would be frustrated, as the decree was obtained *ex parte*.

Incidentally, Mr. Mukherjee submits that there has been no proper service of summons resulting in *ex parte* decision of the suit.

Mr. Surya Prasad Chattopadhyay, learned advocate appearing for the opposite party no.1 denies the submission advanced by the petitioner's advocate. According to Mr. Chattopadhyay, the court below has considered every things in context with the materials available in the case record, and after being satisfied, declined to grant any stay.

Supporting the order of the court below, Mr. Chattopadhyay submits that there lies nothing to be interfered with.

Having considered the submission of both sides, it appears that rejection of a prayer for stay of execution proceeding is only under dispute in this case. There is admittedly, a Misc. Case instituted by the petitioner so as to challenge the *ex parte* decree granted in this case

upon filing an application under Order 9 Rule 13 C.P.C., which is registered as Misc. Case No.4 of 2022.

In the event of the execution of *ex parte* decree, pending decision of the Misc. Case referred hereinabove, there will be nothing left for adjudication in connection with an application under Order 9 Rule 13 C.P.C. There is hardly anything left for any further elaboration, on the score that in the event of the Misc. Case being decided in an expeditious manner, that will streamline the controversy surfaced at the moment.

The revisional application is thus disposed of setting aside the impugned order dated 18th June, 2022, passed in Title Execution Case No.18 of 2020 of learned Civil Judge (Junior Division), 1st Court, Barasat, North 24 Parganas, thereby granting stay of execution proceeding, referred hereinabove till the decision of the Misc. Case No.4 of 2022 under Order 9 Rule 13 C.P.C.

It is clarified that the pending Misc. Case has to be disposed of preferably before the end of December, 2022.

This would not however, prevent the court below to take up any application filed by the opposite parties praying for occupational charges, if filed in the meantime.

Parties are directed to make communication of this order to 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.)