

14.11.2022
Item No.13
Ct. No.7
CHC
(disposed of)

C.O.2469 of 2022

**Debasish Basak & anr.
Vs.
Rabindra Nath Sinha & ors.**

Mr. Tarak Nath Halder
...for the petitioners

Mr. M. Rahaman
...for the opposite parties

Affidavit-of-service furnished by the petitioners be taken on record.

Both the order dated July 29, 2022, and order dated April 8, 2022 are under challenge. These two orders have nexus with Misc. Case No.20 of 2022, arising out of Title Execution Case No.3 of 2022, seeking adjudication of independent title filed by the petitioners.

Mr. Halder, learned advocate appearing for the petitioners submits that the court below in connection with a pending execution proceedings has attempted to execute a decree granting police help, without even making consideration of the bailiff's report revealing resistance offered to the executability of decree, if there be any.

Mr. Halder, further contends that when an application has been filed and registered in connection with Misc. Case No.20 of 2022 under Order 21 Rule 97

to 101 C.P.C. seeking adjudication of independent title of the petitioners to the suit property, the decree granted if any, executed at the moment, there may be future complication, and there would be nothing left to adjudicate in Misc. Case No.20 of 2022.

Incidentally, it is submitted by Mr. Halder that a collusive suit has been ended in a compromise decree.

Per contra, Mr. Rahaman disputes with the submission of Mr. Halder and strenuously submits that terms of the compromise decree having been violated, there arose the scope for execution of the decree, which may not be stalled in any manner whatsoever, merely for the existence of a Misc. Case under Order 21 Rule 97 to 101 C.P.C. (Misc. Case No.20 of 2022).

Having considered the submission of both sides, it appears that there has been a compromise decree granted in February, 2022, which has been sought to be executed upon inviting the execution proceeding in connection with Title Execution Case No.3 of 2022 of learned Civil Judge (Senior Division), Sealdah, South 24 Parganas.

In the pending execution proceedings, an application has been filed by the petitioners seeking adjudication of independent title, if there be any to the suit property. Adjudication of independent claim, if any, needs to be decided expeditiously in the given

circumstances of the case, and if the same is decided with utmost expedition, the entire controversy surfaced between the parties would be streamlined, and there may arise occasion for execution of the decree, subject to the decision of Misc. Case No.20 of 2022.

No further elaboration is necessary. The revisional application is thus disposed of upon setting aside the impugned orders, there by granting stay of execution proceedings vide Title Execution Case No.3 of 2022 till the decision of Misc. Case No.20 of 2022.

It is thus emphasized that the pending Misc. Case No.20 of 2022, under Order 21 Rule 97 to 101 C.P.C., in the given circumstances of the case, needs to be disposed of expeditiously as possible, preferably within August, 2023, without granting unnecessary adjournment, unless it is extremely unavoidable.

This would not, however, prevent the court below to fix consecutive dates, subject to his suitability and convenience, for the decision of the Misc.Case in a time bound manner.

While deciding the Misc. Case, the opposite parties may be given liberty to bring it to the notice of the terms of the compromise effected between the parties, and the same may be considered in accordance with law by the court below.

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

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.)