

22.12.2022
Item No.10
Ct. No.7
CHC
(disposed of)

C.O. 3795 of 2022

**Sri Gautam Dey & anr.
Vs.
Sukanta Kumar Das & ors.**

Mr. Debasis Roy,
Mr. Anjan Banerje

...for the petitioners

Mr. Kushal Chatterjee,
Mr. Prasayan Mukherjee,
Mr. Shibjit Mitra

...for the opposite parties

While assailing the impugned order dated 16th September, 2022, passed in Misc. Case No.8 of 2020, arising out of LR (Exe)-12/18, Mr. Roy, learned advocate appearing for the petitioners/judgement debtors submits that writ of delivery of possession may not be allowed to be executed during the pendency of an application under Section 47 C.P.C. filed by the petitioners on 19th February, 2020.

Admittedly, this is a preemption case.

Mr. Chatterjee, learned advocate appearing for the opposite parties/decreed-holders submits that application under Section 47 C.P.C. has already been disposed of, as would be evident from impugned order itself produces no document to support that there has been a merited disposal of a case under Section 47 C.P.C. by the court below in the meantime.

Having considered the submission of both sides, the bone of contention between the parties in the instant case is that there has been no conscious decision reached by the court below addressing the merits of the case filed under Section 47 C.P.C.

There is nothing reflected in the documents annexed with the instant revisional application as regards merited disposal of an application registered as Misc. Case No.8 of 2020 under Section 47 C.P.C. It is therefore, to ascertain whether there has been conscious decision reached by the court below in connection with application under Section 47 C.P.C. or not, providing a hearing to both the parties, after due address to the merits involved in the case.

When there is nothing to reveal at the moment regarding disposal of petition under Section 47 C.P.C., no further elaboration is felt necessary.

The revisional application stands disposed of directing the court below to ensure expeditious disposal of application under Section 47 C.P.C. registered as Misc. Case No.08 of 2020, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable, preferably before the end of March, 2023, if not already disposed of in the meantime.

Till the decision of the Misc. Case No.08 of 2020, the writ of delivery of possession, if issued, may not be executed undertaking any exercise for the purpose.

It is however, clarified that, if there be any conscious decision reached in connection with an application under Section 47 C.P.C. vide Misc. Case No.08 of 2020, the court below will be free to execute the decree in accordance with the law.

This would not, however, prevent the court below to consider, if necessary application is filed by the decree-holders pertaining to deposit of some money against the execution of decree in accordance with law, giving an opportunity of hearing to other sides.

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.)