

07.06.2022
Item No.18
Court No.18
AJ.

C.O. 3880 of 2017

**I.A. No. CAN 1 of 2020
CAN 2 of 2020
CAN 3 of 2020**

**Farid Sk.
-Vs-
Afroja Bibi**

Mr. Lutful Haque,
Mr. Moniruzzaman.
.....for the petitioner.

Mr. Partha Pratim Roy,
Ms. Paulami Chakraborty.
.....for the opposite party.

**In re : C.A.N. 1 of 2020
C.A.N. 2 of 2020**

The revisional application was dismissed for default on January 29, 2019.

C.A.N. 1 of 2020 is an application for restoration of the revisional application by recalling of the said order dated January 29, 2019 and C.A.N. 2 of 2020 is an application for condonation of delay in filing the aforesaid application for restoration.

Perused the application for condonation of delay, the explanation offered in the said application although is not very much satisfactory but, for the ends of justice, the said delay is condoned subject to payment of costs of Rs.5,000/- to be paid by the petitioner to the opposite party within a week from date.

CAN 2 of 2020 is, thus, allowed.

Perused the application being CAN 1 of 2020 for recalling of the order dated January 29, 2019. It appears that the petitioner was prevented by sufficient

cause from appearing before this Court when the matter was called on for hearing.

The order dated January 29, 2019 is, therefore, recalled. C.O. 3880 of 2017 is restored to its original file and number.

CAN 1 of 2020 is, thus, allowed without any order as to costs.

In Re : C.O. 3880 of 2017

The revisional application under Article 227 of the Constitution of India is at the instance of the pre-emptee in a proceeding under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 and is directed against the judgment and order dated May 15, 2017 passed by the learned Additional District Judge, Kandi, District–Murshidabad in Miscellaneous Case No. 28 of 2016.

Vakalatnama filed on behalf of the pre-emptor/opposite party be kept with the record.

The opposite party sought to pre-empt the disputed sale on the ground that he being a co-sharer of the suit plot is entitled to pre-empt the said sale and alleged that no notice of the said sale as required under sub-section (5) of Section 5 of the said Act of 1955 was served upon him.

The pre-emptee contested the application for pre-emption inter alia, on the grounds that the said application is barred by limitation.

The learned Trial Judge answered the issue of limitation in favour of the pre-emptor holding that that the pre-emptor being a non-notified co-sharer is entitled to exercise his right of pre-emption within a

period of three years from the date of completion of registration of the impugned deed and accordingly allowed the application for pre-emption.

The Appeal Court by the impugned judgment and order has affirmed the said order of the learned Trial Judge.

The question as to the period of limitation within which a non-notified co-sharer is required to exercise his right of pre-emption has been answered by the Hon'ble Division Bench of this Court in the case of **NURUL ISLAM vs. ESRATUN BIBI** reported in **2017(3) CLJ (CAL) 241**, the said issue, therefore, is no longer *res integra*.

It has been held in the aforesaid decision that such period of limitation is governed by the Article 97 of the schedule to the Limitation Act, 1963 and in terms of the said article, depending upon the facts and circumstances of the case, the said period of limitation is one year from the date of happening of either of the contingencies envisaged under the third column of the said Article.

In the present case, the registration of the impugned deed was completed on February 04, 2011, as such, the application for pre-emption ought to have been filed within one year from the said date but the same has been filed after expiry of the said period, on September 03, 2013.

Both the Courts below, therefore have acted with material irregularity in holding that the application for pre-emption was filed within time, as such the order impugned is set aside and in

consequence, the application for pre-emption registered before the 1st Court of the learned Civil Judge (Junior Division), Kandi, District: Murshidabad as Misc. L.R. No. 24 of 2013 is dismissed.

The pre-emptor is at liberty to withdraw the amount deposited by him at the time of filing of the application for pre-emption. The learned Trial Judge is requested to expedite the disbursement of the said money, if applied for.

C.O. 3880 of 2017 is disposed of with the above terms without any order as to costs.

In Re : CAN 3 of 2020

This is an application for expeditious disposal of the revisional application.

In view of the disposal of the revisional application, the instant application being CAN 3 of 2020 has become infructuous and is also disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)