

10.01.2023
Item No.22
Ct. No.7
CHC

C.O. 98 of 2023

Nirmal Kumar Tiwari
Vs.
Sri Gour Charan Mullick & anr.

Mr. Sounak Bhattacharya,
Mr. Gautam Das,
Mr. Sandeep Kr. Tiwari
...for the petitioner

Mr. Souradipta Banerjee,
Ms. Fatima Hassan
...for the opposite parties

Mr. Bhattacharya, learned advocate appearing for the petitioner, while assailing orders dated 6th December, 2022 and 19th December, 2022, passed in Misc. Case No.212 of 2017, arising out of Ejectment Execution Case No.101 of 2017, pending before learned Judge, 6th Bench, Presidency Small Causes Court, at Calcutta, submits that the court below while granting police assistance for the execution of the decree, followed by a direction upon the bailiff to hand over possession of the decretal property to the decree-holders, the pendency of the restoration application filed by the petitioner/judgement-debtor in connection with Second Appeal could not be taken care of.

Mr. Bhattacharya submits that objection of the judgment-debtor could not be appropriately gone into by the court below, though the opposite party has adduced evidence without filing written objection for the purpose.

It is thus simply contended by Mr. Bhattacharya that whenever restoration application has already been filed for appropriate order in connection with Second Appeal, which admittedly got dismissed on 23rd June, 2022, execution of the decree taking order of the court below will make the Second Appeal infructuous.

Per contra, Mr. Souradipta Banerjee, learned advocate appearing for the opposite parties/decreed-holders submits that petitioner filing the instant revisional application was not the party to the application praying for police assistance.

It is thus submitted by the learned advocate for the opposite parties that the instant revisional application is not maintainable.

Incidentally, it is submitted by the learned advocate for the opposite parties that petitioner by proved conduct showed his reluctance in paying occupational charges granted at the rate of Rs.8,000/- per month by the first lower appellate court.

It is strongly, however, contended by the opposite parties that a decree already granted by the court below is going to be frustrated, for the exhibition of some technicalities with use of some extraneous influence, which is not at all encouraging one.

The trial court granted decree of eviction in 2017. The first lower appellate court, however, affirmed the same. Second Appeal has been preferred, which ultimately got dismissed on 23rd June, 2012. A restoration application has already been filed.

Mr. Banerjee, submits that decree even could not be executed yesterday, because of the strong resistance put up by the judgment-debtor in spite of the presence of the police authority.

Learned advocate appearing for the opposite parties acknowledges service of copy of restoration application so far as the Second Appeal is concerned. The propriety of the order impugned may be best addressed after the decision of the restoration application, if any decided in the meantime.

In the meantime, let there be an order directing petitioner/judgment-debtor to secure Rs. 50,000/- (Rupees Fifty Thousand only) before the court below within seven (07) days from the date of communication of this order to the court below, and subject to the deposition of such amount, the decree

may not be executed till the end of February, 2023, in default, the decree may be executed without making any further reference to the other sides.

Parties are directed to communicate 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.)