

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 299 of 2023

Ramesh Kumar Jha
Vs.
Niva Park Housing Complex Residents'
Association (Phase 1) & Ors.

Mr. Partha Pratim Roy
Ms. Sudeshna Basu Thakur
... For the petitioner

Mr. Probal Kumar Mukherjee, Sr. Advocate
Mr. Debanik Banerjee
Mr. Akash Ganguly
... For the opposite party no.1

This application has been filed challenging the order dated 16th August, 2022 passed by the learned Civil Judge (Junior Division), 1st Court, Alipore, South 24-Parganas, in connection with Title Suit No.480 of 2022. By the impugned order, the learned Judge dealt with an application under Order VII Rule 11 of the Code of Civil Procedure filed by the petitioner.

According to the petitioner, the suit was filed by the opposite party no.1/plaintiff with a prayer for cancellation of the registered deed of conveyance but *ad valorem* court fees has not been filed in compliance with the provision of Section 31 of the Specific Relief Act, 1963. Learned Judge dealt with the application under Order VII Rule 11 of the Code of Civil Procedure relied on a case of **Suhrid Singh alias Sardool Singh v. Randhir**

Singh & Ors. reported in **(2010) 12 SCC 112** and came to his opinion that the executor of the deed in question did not file the suit, therefore, the provision of Section 31 of the Specific Relief Act, 1963 has no role to play. Accordingly, the learned Judge disallowed the prayer.

In course of hearing, Mr. Partha Pratim Roy, learned advocate, appearing on behalf of the petitioner submitted in terms of prayer of the plaint that once the prayer for cancellation was made in the suit, then *ad valorem* court fees has not been filed in compliance with the provision of Section 31 of the Specific Relief Act, 1963.

Mr. Probal Kumar Mukherjee, learned Senior Advocate, on behalf of the opposite party no.1 has relied on the case of **Suhrid Singh alias Sardool Singh** (supra) and submitted that the plaintiff is not the executor of the deed in question. Therefore, the question of filing *ad valorem* court fees in compliance with the provision of Section 31 of the Specific Relief Act, 1963 does not arise.

After careful perusal of the entire materials on record as well as the order impugned, I am in agreement with Mr. Mukherjee that the executor of the deed has not filed a suit for declaration. Actually the plaintiff is the non-executant and filed the suit for declaration that the deed is null and void and does not bind on him. He has to merely pay a fixed court fee. Relying on the observation of the Hon'ble Apex Court in **Suhrid Singh alias Sardool**

Singh (supra), I do not find any reason to interfere with the order passed by the learned Trial Court on 16th August, 2022 in connection with Title Suit No.480 of 2022.

With the aforesaid observation, the revisional application, being CO 299 of 2023, stands dismissed.

Learned advocates appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Civil Judge (Junior Division), 1st Court, Alipore, South 24-Parganas, forthwith.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)