

S/L 36
10.05.2023
Court. No. 12
Sourav

**CO 226 of 2022
With
CAN 1 of 2022**

**Smt. Lipika Naskar & Anr.
Vs.
Ajoy Naskar & Ors.**

*Mr. Pinaki Ranjan Mitra
Mr. Sugata Mukherjee*

...for the petitioners.

Mr. Sanjib Seth

...for the opposite parties.

1. Both the petitioners and the opposite parties are represented by their respective learned advocates.
2. Learned advocate for the opposite parties filed affidavit-in-opposition on behalf of the opposite party no. 1 and learned advocate for the petitioners filed the affidavit-in-reply. The affidavit-in-opposition and the affidavit-in-reply be taken on record.
3. Heard learned advocates for both the parties at length.
4. Perused the certified copy of the impugned order.
5. On perusal of the entire materials as placed before this Court, it reveals to this Court that in a proceeding under Section 8 of the West Bengal Land Reforms Act, 1955, the opposite party nos. 1 and 2 before the learned Trial Court on 05.04.2021 have filed an application under Section 151 of the Code of Civil Procedure challenging the maintainability of L.R. Misc. Case No. 16 of 2019 based on the proposition of law as held in the reported decisions of ***Barasat Eye***

Hospital Vs. Kaustabh Mondal, reported in ***(2019) 9 SCC 767*** and ***Abdul Matin Mallick Vs. Subrata Bhattacharjee***, reported in ***2022(3) ICC (S.C.) 641***.

6. Before the learned Trial Court, the petitioner of L.R. Misc. Case No. 16 of 2019 on 14.12.2021 has filed an application under Section 151 of the Code of Civil Procedure praying for permission to deposit balance consideration money along with 10 per cent interest thereof. It reveals from the certified copy of the impugned order that for some reason or other, learned Trial Court disposed of the subsequent application dated 14.12.2021 as filed by the petitioner of the said Misc. case keeping the earlier application dated 05.04.2021 as filed by the opposite party nos. 1 and 2 pending and thereby permitted the petitioner of the said Misc. case to deposit the balance amount of Rs. 6,09,000/- along with 10 per cent interest being Rs. 60,900/- total into Rs. 6,69,000/-.
7. Mr. Mitra, learned advocate for the revisionist/opposite party nos. 1 and 2 submits before this Court that learned Trial Court is not at all justified in allowing the subsequent application of the present opposite party no. 1 keeping the application of the present revisionist pending in view of the ratio of the aforementioned two reported decisions, namely, ***Barasat Eye Hospital (Supra)*** and ***Abdul Matin Mallick (Supra)***. It is further submitted by

Mr. Mitra that by allowing the subsequent application as filed by the present opposite party no. 1 before the learned Trial Court which has been filed on 14.12.2021, the learned Trial Court has made the present revisionist's application dated 05.04.2021 practically infructuous.

8. While opposing the prayer of Mr. Mitra, Mr. Seth, learned advocate for the present opposite party nos. 1 and 2 in course of his submission places his reliance upon two reported decisions of this Hon'ble Court, namely, i) ***Maya Debnath Vs. Uttam Sarkar & Anr.*** reported in **2023(2) Indian Civil Cases 203 (Cal.)** and ii) ***Sk. Abdul Odud Ali Vs. Emanulla Khan & Ors.*** reported in **2021 AIR CC 2722 (CAL)**.
9. It is submitted by Mr. Seth that in order to maintain a judicial decorum, it would be appropriate for this Court to refer the instant matter before the Hon'ble the Chief Justice (Acting) for assigning the matter before a Larger Bench.
10. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for both the parties, it reveals to this Court that while passing the impugned order, learned Trial Court placed his reliance upon the reported decision of ***Barasat Eye Hospital (Supra)***. It further reveals from this Court that even after perusing the proposition of law as discussed in the reported decision of ***Barasat Eye***

Hospital (Supra), learned Trial Court for no reason whatsoever kept the application dated 05.04.2021 as filed by the present revisionists/opposite party nos. 1 and 2 pending and disposed of the subsequent application under Section 151 of the Code of Civil Procedure as filed by the petitioner of the L.R. Misc. Case No. 16 of 2019.

11. In considered view of this Court, it would have been prudent on the part of the learned Trial Court to dispose of both the aforementioned applications together keeping in mind the spirit of the decisions of ***Barasat Eye Hospital (Supra)*** and ***Abdul Matin Mallick (Supra)***.
12. In view of the discussion made hereinabove, this Court thus finds sufficient merit in the instant revisional application and accordingly, the instant revisional application being CO 225 of 2022 is hereby allowed on contest. Consequently, the impugned order dated 15.01.2022 as passed in L.R. Misc. Case No. 16 of 2019 by the learned Civil Judge (Junior Division), 6th Court, Howrah is hereby set aside.
13. Before parting with the instant case record, this Court in exercise of its plenary power directs the learned Trial Court to hear out and consider both the applications dated 05.04.2021 as filed by the opposite party nos. 1 and 2 of the said L.R. Misc. Case and the application under Section 151 of the Code of Civil Procedure dated 14.12.2021 as filed by the petitioner

of the aforementioned Misc. case together and to dispose of both the aforementioned applications by a common order positively within a month from the date of communication of this order, of course, after giving the parties of the L.R. Misc. Case No. 16 of 2019 a chance of fair hearing.

14. With the aforementioned observation, the instant revisional application being **CO 226 of 2022** along with the interim application being **CAN 1 of 2022** are thus, disposed of.
15. It is, however, made clear that the observation as made hereinabove is purely limited for the disposal of the instant revisional application and the learned Trial Court is hereby directed not to persuade himself with any of the observations as made hereinabove at the time of the disposal of the aforesaid two applications dated 05.04.2021 and 14.12.2021.
16. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)