

Item No. 1
03.07.2023
Court. No. 19
GB

C.O. 372 of 2022
With
CAN 3 of 2023

Kusum Steels Ltd.
Vs.
M/s. Bajrangbali Engineering Company Ltd.

*Ms. Sutapa Sanyal,
Mr. Deepak Kumar Singh,
Mr. Debrup Bhattacharjee,
Mr. Ayush Jain*

...for the Petitioner.

*Mr. Partha Pratim Roy,
Mr. Gautam Das,
Mr. Sandeep Kr. Tiwari*

...for the Opposite Party.

CAN 3 of 2023 is an application for extension of the interim order, which was originally passed by a coordinate Bench on September 19, 2022.

It appears that an eviction decree was granted in favour of the opposite party sometime in 2011. The judgment and decree was challenged in Title Appeal No.227 of 2011 by the petitioner. The appeal was dismissed for default in 2021. A restoration application was filed. As the restoration application was belated, an application under Section 5 of the Limitation Act, for condonation of delay was also filed. The application was registered as Misc. Case No.17 of 2021.

During pendency of the title appeal, the decree-holder put the decree into execution.

The petitioner filed an application for stay of the execution proceedings. The learned executing court rejected the said application.

Aggrieved, by the aforementioned order, the petitioner has moved this revisional application.

Considering the fact that, there was an eviction decree against the petitioner and the petitioner is still enjoying the property, the coordinate Bench deemed it fit to stay the Execution Case No.2 of 2021 which is pending before the learned Civil Judge (Senior Division), 2nd Court at Howrah for a period of four weeks subject to payment of cost of Rs.7 lakhs to be deposited by the petitioner before the learned court below, within seven days from the order dated September 19, 2022. The petitioner deposited the amount in the learned court below. The interim order was further extended with a direction to deposit a sum of Rs.3 lakhs on March 2, 2023.

Again, another application has been filed for extension of the interim order of injunction.

The application for restoration filed in connection with the title appeal was barred by limitation. An application for condonation of delay with the explanation was filed. Both the applications are pending.

Hence, instead of relegating the matter back to the lower appellate court for a decision on the application under Section 5 of the Limitation Act and for further hearing of the application for restoration of the appeal, if delay is condoned, this Court decides to dispose of the said applications.

The appeal was dismissed during the pandemic. The Hon'ble Apex Court had extended the period of limitation in all suits and proceedings. For such reasons, the delay caused

by the petitioner in filing the restoration application under Order 41, Rule 19 of the Code of Civil Procedure, deserves to be condoned. The application under Section 5 of the Limitation Act filed in connection with Misc. Case No.17 of 2021 is allowed and the restoration application is registered.

This Court deems it fit to restore the appeal by setting aside the order of dismissal of the appeal for default, as the pandemic intervened and proper steps could not be taken by the petitioners. Hence Misc. Case No.17 of 2021 is also allowed and disposed of. The Title Appeal No.227 of 2011 is restored to its original file and number.

This Court finds that the petitioner although suffered a decree of injunction, has been enjoying the property since 2011. The appeal filed in 2011 was dismissed for default, ten years from filing of the same. Thus, this Court is of the view that the landlord deserves further security during the pendency of the appeal if the execution is required to be stayed.

As the landlord has been suffering since long and he is not being able to enjoy the property, this Court deems it fit to direct the learned Additional District Judge, 5th Court at Howrah, to dispose of the Title Appeal No.227 of 2011 within a period of three months from the next date fixed mandatorily, without granting unnecessary adjournments to either of the parties. The Execution Case No.2 of 2021 shall remain stayed for a period of four months or till the disposal of the appeal, whichever is earlier, subject to the petitioner depositing a further sum of Rs.10 lakhs before the learned

executing court. The money shall be deposited by the petitioner within July 21, 2023. In case of default, the learned executing court shall proceed with the execution.

The prayer of Mr. Roy to allow withdrawal of the money is not considered by this Court. Mr. Roy's client is at liberty to apply before the learned executing court for such withdrawal and if such application is filed, the same shall be decided upon contested hearing and upon giving the petitioner an opportunity to file a written objection.

This Court has not expressed any opinion on the merits of the title appeal. The title appeal shall mandatorily be disposed of within the aforementioned period.

Accordingly, the revisional application along with the connected application are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)