

04.07.2023
Court No.19
Item no.17
CP

C.O. 556 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2023
With
CAN 3 of 2023

Tripti Bose & ors.
Vs.
Tulika Ghosh & ors.

Mr. Sayantan Bose
Ms. Neha Mishra
.....for the petitioners.

Mr. Saptangsu Basu, Sr. Advocate

.....for the opposite parties.

CAN 1 of 2023, is disposed of because the applicant does not want to proceed with the same.

CAN 2 of 2023, does not call for adjudication by this court at this stage, as the applicant cannot pursue parallel proceedings. An application with similar prayers, has already been filed before the learned Trial Court. The same shall be decided in accordance with law. CAN 2 of 2023 is disposed of without any orders.

CAN 3 of 2023, is an application for substitution of the heirs and legal representatives of the sole defendant/tenant in the suit for eviction. Mr. Basu, learned senior advocate represents the heirs and legal representatives of the deceased, Sanat

Kumar Ghosh. Let the heirs and legal representatives of late Sanat Kumar Ghosh as pleaded in paragraph 2 of the said application, be substituted in this proceeding.

CAN 3 of 2023 is allowed and disposed of. Office to take steps by amending cause title.

The revisional application has been filed challenging the inordinate delay in disposal of the Misc. Appeal No. 401 of 2015 which is pending before the learned Additional District Judge, 5th Court at Alipore at South 24 Parganas and also the delay in disposal of the Title Suit No. 131 of 2005 which is pending before the learned Civil Judge (Senior Division), 1st Court at Alipore.

It is submitted by Mr. Bose, learned advocate for the petitioners, that the Misc. Appeal has been pending since 2015. The suit is for eviction which is also pending since long and the landlord has been suffering since 2001. The suit was subsequently renumbered as Title Suit No. 131 of 2005.

It is submitted that the defendant had been filing frivolous applications one after the other in the Title Suit. Ultimately, an application for injunction was filed which was rejected and a Misc Appeal was preferred sometime in 2015. The learned lower appellate court called for the records of the suit and

did not proceed with the Misc. Appeal. As a result of which, the suit also could not proceed.

Mr. Basu, learned senior advocate appearing for the substituted opposite parties submits that the revisional application should be dismissed as the same suffers from suppression of facts. An order was passed sometime in 2014 by which Title Suit No. 97 of 2013 was directed to be heard simultaneously with Title Suit No. 131 of 2005.

This court finds that a prayer for analogous hearing made by the defendant had been rejected, but the learned Civil Judge (Senior Division), 6th Court had directed that Title Suit No. 97 of 2013 should be heard simultaneously on the same date. As the analogous hearing not allowed, the logical inference that can be drawn from the order is that the trial court was of the view that both the suits should be heard on the same day.

There is no quarrel with such proposition of Mr. Basu that the learned court ought to call for the records of Title Suit No. 97 of 2013 and post the same for hearing on the same day as Title Suit No. 131 of 2005.

With regard to the other contention of Mr. Basu that the learned lower appellate court should be directed to hear out all pending applications

before the Misc. Appeal is disposed of, is also accepted by the court.

Once the heirs of the deceased defendant has been substituted by this court in this proceeding, it will be only a matter of formality that the learned lower appellate court shall incorporate the names in the Memorandum of Appeal by passing necessary orders and proceed with the hearing of the application for local inspection.

The application for local inspection, under Order 39 Rule 7 of the Code of Civil Procedure which has been filed in the Misc. Appeal shall be disposed of within two weeks from date of communication of this order. Consequent upon disposal of the said application, the Misc. Appeal should be disposed of within next two weeks. The LCR shall be sent down within seven days from disposal of the Misc Appeal.

The application for addition of party filed by one Mr. Malay Kumar Ghosh in the learned lower appellate court is also disposed of without any order on merits, as such application shall be finally decided in the suit.

Upon receipt of the LCR the learned trial court shall post Title Suit No. 131 of 2005 and Title Suit No. 97 of 2013 one after the other on the same day and proceed with the hearing of all the pending applications, which Mr. Basu has disclosed to be five

in number and were filed in connection with Title Suit No.131 of 2005.

As objections to the said applications have been filed, this court is of the view that the said applications should be disposed of on an urgent basis. The issues involved in the applications do not have any connection with Title Suit No. 97 of 2013. All these applications should be disposed of within five months, irrespective of the stage of Title Suit No.97 of 2013. Thereafter, the suit shall proceed in accordance with law. Title Suit No. 97 of 2013 as already directed earlier shall be posted on the same day, but shall not be heard analogously.

Title Suit No.131 of 2005, shall be disposed of within the following year after disposal of the applications.

The suit for eviction has been pending since long and the learned lower appellate court ought to have been more diligent in disposal of the said Misc. Appeal, instead of calling for the L.C.R. and then allowing the Misc. Appeal to be dragged for a period of eight years. The Trial Court should also be conscious of the situation and abide by the order of this court. It is made clear that apart from the aforementioned applications, if other applications are subsequently filed, the respective courts must

dispose of the same within the period mentioned herein.

This court has not entered into the merits of the applications filed by the parties or into the merits of the suit.

The lower appellate court shall intimate the disposal of the Misc Appeal to the Learned Registrar General, High Court at Calcutta.

The revisional application is accordingly disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)