

D/L 21.
March 27, 2023.
MNS

WPA No. 5029 of 2011

+

CAN 1 of 2022

+

CAN 2 of 2023

Nazrul Islam

Vs.

The District Registrar and others

Mr. Abir Lal Chakraborty

...for the petitioner.

Ms. Tuli Sinha

...for the State.

Re: CAN 2 of 2023 (Restoration Application)

It is rightly pointed out by learned counsel for the State that the petitioner is apparently a habitual defaulter since the present application, bearing CAN 2 of 2023, has been filed for restoration of a previous restoration application, bearing CAN 1 of 2022.

Yet, keeping in view that the petitioner is an octogenarian and there might have been certain difficulties for the petitioner in conducting the litigation, CAN 2 of 2023 is allowed, thereby recalling the order dated December 22, 2022 passed in CAN 1 of 2022 and restoring CAN 1 of 2022 to its original file and number.

Re: CAN 1 of 2022 (Restoration Application in connection with original writ petition).

Consequently, CAN 1 of 2022 is also taken up for hearing. Although there was certain delay in filing the

application, in view of the reasons given above, which is also applicable to CAN 1 of 2022, it is deemed that sufficient cause has been shown in the application for the absence of the petitioner on the relevant date.

Accordingly, CAN 1 of 2022 is allowed, thereby recalling the order dated April 29, 2022 and restoring WPA No. 5029 of 2011 to its original file and number.

However, due to the conduct of the petitioner, who was negligent in moving his case, the petitioner shall pay a token cost of Rs. 1,000/- to the State/Respondent.

Re: WPA No. 5029 of 2011

On consent of the parties, the writ petition is taken up for hearing.

The petitioner, had a deed of transfer executed in his favour by the private respondents upon payment of consideration by the petitioner and subsequently presented the deed for registration, which was not completed due to subsequent absence on the part of the vendors. The District Registrar, by the impugned order, dropped the entire proceeding initiated by the petitioner under Section 74 of the Registration Act, 1908 (1908 Act).

It is contended that the petitioner was not at fault for the matter being dragged. Initially there was a talk of amicable settlement between the vendors and the petitioner for a long time. Thereafter the vendors/private respondents filed a suit against the petitioner and did not co-operate at all with the conduct of the proceeding under Section 74 of the 1908 Act. At

that stage, it is argued, the petitioner was not in a position to produce any document or other verification for the purpose of proving the execution of the document in proper manner.

Learned counsel for the State submits that the petitioner is a habitual defaulter. It is seen from the impugned order dated April 21, 2010 itself that the petitioner had been equally responsible as the vendors to drag the matter over a prolonged period. The order was passed in the year 2010 and, as such, the matter has lost relevance at the present juncture.

Upon hearing learned counsel for the parties, it is seen that the District Registrar, while passing the impugned order dated April 21, 2010, proceeded on a hyper-technical approach. It is seen from the order itself that the vendors had taken time on several dates to purportedly reach a resolution in the matter. However, ultimately the vendors, instead of entering into such amicable resolution, had instituted a suit in the Civil Court against the petitioner.

Be that as it may, it is desirable that the District Registrar gives another opportunity to the petitioner to adduce proper evidence, if need be, by producing relevant documents from the records of the Title Suit, bearing Title Suit No. 317 of 1999, filed before the Seventh Court of Sub-Judge[now Civil Judge (Senior Division)] at Alipore, to prove his case before the District Registrar under Section 74 of the 1908 Act.

Accordingly, WPA No. 5029 of 2011 is allowed on contest, thereby setting aside the order dated April 21, 2010, whereby it was observed by the District Registrar that no order of

registration could be passed, rather, refused to make order of registration, and directing the District Registrar, South 24 Parganas, to reopen the hearing of the case and, upon granting opportunity of adducing evidence and arguments to the petitioner as well as the vendors, to decide the said matter in accordance with law, as expeditiously as the business of the District Registrar permits.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)