

24.8.2023
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Ct. no. 652
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CO 1073 of 2019

Supriya Chowdhury Sarcar
Alias Supriya Sarcar
Vs.
Nurrul Huda Layek

Mr. Arnab Mukherjee ...for the Petitioner

Mr. Kushal Chatterjee
Mr. Debrup Chowdhury
Mr. Rishav Manna ...for the Opposite party

Copy of the order no. 5 dated 8.9.2021 is taken on record.

Being aggrieved and dissatisfied with the order dated 16.1.2019 passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore, South 24 Parganas in Money Execution Case no. 19651 of 2013, present application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the petitioner as plaintiff filed a suit for recovery of money against the opposite party herein. The said suit was decreed ex parte. The petitioner herein after passing the decree, put the said decree into execution which was registered as aforesaid Money Execution Case no. 19651 of 2013. The judgment debtor did not appear before the Executing court. Therefore, warrant of arrest was issued for

appearance of the said judgment debtor/opposite party. Subsequently, in pursuant to the said order, the judgment debtor filed Hazira on the date of hearing but remained unrepresented when the matter was taken up and therefore again warrant of arrest was issued on 29.8.2017. Subsequently, the opposite party appeared and prayed time for filing of an affidavit. In the said execution proceeding, the opposite party/judgment debtor deposed that he has various immovable properties but did not express his willingness to satisfy the decree. In such view of the matter, the petitioner filed an application under Order XXI rule 37 of the Code of Civil Procedure for sending the opposite party/judgment debtor into civil prison. The opposite party herein contested the said application by filing written objection. The executing court below after hearing both the parties, rejected the application filed by the petitioner.

During hearing, it is submitted that being aggrieved by the ex parte decree passed in the concerned Money Suit no. 7589 of 2011, the judgment debtor/opposite party herein filed an application for setting aside the ex parte decree under Order IX Rule 13 of the Code. Subsequently the said application under Order IX rule 13 got dismissed for default. The opposite party prayed for restoration of the said application which was also rejected by the court. Being aggrieved by that order, the opposite party preferred Misc. Appeal no. 54 of 2021 which is

pending before the learned Additional District Judge, 3rd Court, Alipore. It is further submitted that the learned Additional District Judge, 3rd Court, Alipore by order no. 5 dated 8.9.2021, was pleased to pass an order that the aforesaid money execution case no. 19651 of 2013 pending before the court of learned Civil Judge (Senior Division), 2nd Court, Alipore, South 24 Parganas, shall be stayed till disposal of the limitation petition pending in the Misc. appeal.

In the aforesaid facts and circumstances of the case, when the order impugned has a direct bearing upon the fate of Misc. Appeal and since the Appellate court has already stayed the execution proceeding till disposal of Section 5 application and since said Section 5 application has not yet been disposed of, I find no merit to keep the present application pending for an indefinite period. Moreover, during pendency of said application under Section 5, it might have been a futile exercise on the part of this court to go on merit in order to decide the issue. Accordingly invoking jurisdiction under Article 227 of the Constitution of India, present application is hereby disposed of with a direction to the learned Additional District Judge, 3rd Court, Alipore to dispose of the opposite party's application under Section 5 of the Limitation Act positively within a period of four weeks from the date of communication of the order. I have made it clear that since I have not gone into the merit of the

Application, this order will not preclude petitioner/the decree holder to prefer appropriate fresh application in future in case of survival of decree before the concerned executing court if situation demands.

C.O. 1073 of 2019 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)