

S/L 23
22.03.2023
Court. No. 12
Suwayan

**CO 1189 of 2019
With
CAN 2 of 2019 (Old No. CAN 9339 of 2019)
With
CAN 3 of 2022**

**Sri Kanakendra Mohan Chowdhury & Anr.
Vs.
Sri Gourav Bhattacharya & Ors.**

*Mr. Ayan Banerjee
Mr. Krishnendu Bhattacharya
Mr. Arijit Bhowmick
Ms. Debasree Dhamali
Mr. Priyankar Ganguly*

...for the petitioners.

Mr. Pratyush Patwari

...for the added opposite party.

Learned Advocate for the revisionists and learned
Advocate for the intending added parties are present.

None appears on behalf of the opposite party Nos.
1 and 2.

At this stage, CAN 3 of 2022, is now taken up for
hearing.

By filing CAN 3 of 2022, one Mr. Dinesh Kumar
Goyal has prayed for adding him as opposite party in the
instant revisional application since during the pendency
of the instant revisional application, the said Mr. Dinesh
Kumar Goyal has purchased the suit property from the
opposite party Nos. 1 and 2 by a registered deed of
assignment dated October 15, 2020. It is contended on
behalf of the proposed added party, Mr. Dinesh Kumar
Goyal that since this proposed opposite party has stepped
into the shoes of the opposite party Nos. 1 and 2 of the

instant revisional application, he may be added as one of the opposite parties in the instant revisional application. Learned Advocate for the revisionists, however, opposes such prayer.

On perusal of the entire materials as placed before this Court it reveals that sufficient *prima facie* materials have been placed to substantiate that the proposed opposite party, Mr. Dinesh Kumar Goyal has purchased the suit property from the opposite party Nos. 1 and 2 of the instant revisional application and accordingly in considered view of this Court he has become a necessary party in the instant revisional application.

Accordingly, CAN 3 of 2022 is hereby allowed.

Department is hereby directed to incorporate the name, address and other particulars of Mr. Dinesh Kumar Goyal in the cause title of the petition under Article 227 of the Constitution of India as opposite party No. 4.

At this stage, as per request of the learned Advocate for the petitioners and the opposite party No. 4 CAN 2 of 2019 (Old No. CAN 9339 of 2019) is taken up for hearing.

By filing CAN 2 of 2019 (Old No. CAN 9339 of 2019) the opposite party Nos. 1 and 2, namely, Gourav Bhattacharya and Anubhab Bhattacharya have prayed for modification of the interim order dated 04.04.2019 as passed in this case which was extended time to time by imposing monthly occupation charge upon the opposite parties of the said application payable to the applicants.

Learned Advocate for the newly added opposite party No. 4 submits before this Court that the said application CAN 2 of 2019 (Old No. CAN 9339 of 2019) may be allowed.

Learned Advocate for the petitioners, however, opposes such prayer contending that such petition for fixing occupational charge has not been filed on behalf of the newly added opposite party No. 4 but the same has been filed on behalf of the opposite party Nos. 1 to 2. Since the opposite party Nos. 1 to 2 are absent today, this Court considers that probably the opposite party Nos. 1 to 2 have lost their interest in moving the said application and accordingly CAN 2 of 2019 (Old No. CAN 9339 of 2019) is hereby dismissed for default.

At this stage, the petition under Article 227 of the Constitution of India as filed by the revisionists is taken up for hearing.

On perusal of the impugned order dated March 20, 2019 as passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24 Parganas it reveals that in a proceeding under Order 9 Rule 13 of the Code of Civil Procedure, the present revisionists being the judgment debtor of Title Suit No. 1227 of 2015 has prayed for stay of Title Execution Case No. 15 of 2018 which has been refused by the said Court. After due consideration over the materials as placed before this Court and after hearing the learned Advocate for the petitioners/revisionists and the learned Advocate for the newly added opposite party No. 4 it appears to this Court

that in the event the stay as prayed for before the learned Trial Court in Misc. Case No. 24 of 2019 as filed under Order 9 Rule 13 of the Code of Civil Procedure has not been granted, the very purpose of filing the said Misc. Case No. 24 of 2019 would become infructuous.

In view of such, this Court allows the instant revisional application. Consequently, the impugned order dated March 20, 2019 as passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24 Parganas in Misc. Case No. 24 of 2019 is hereby set aside.

It is further ordered that there shall be stay of all further proceeding of Title Execution Case No. 15 of 2018 till disposal of Misc. Case No. 24 of 2019 by the said Trial Court. It is, however, directed that liberty is given to the present newly added opposite party No. 4 to file application for addition of party in Misc. Case No. 24 of 2019 and in the event such application has been filed, such application has got to be disposed of within a fortnight from the date of filing of the said application after giving an opportunity to the present revisionists that is; the opposite parties of the said Misc. case to file their written objection and/or affidavit-in-opposition, if there be any.

It is further directed that thereafter the learned Trial Court shall proceed with Misc. Case No. 24 of 2019 in *de-die-in-diem* manner without granting any adjournments to either side for whatsoever reason. It is further directed that Misc. Case No. 24 of 2019 shall have to be disposed of by the learned Trial Court within three

months from the date of communication of this order. It is also made clear that the time limits of three months as fixed by this Court is mandatorily to be observed by the learned Trial Court.

Liberty is also given to the present newly added opposite party No. 4 to pray for occupational charges before the learned Trial Court in Misc. Case No. 24 of 2019 if he is at all made party in the said Misc. case by the learned Trial Court and in the event such application is filed, learned Trial Court is at liberty to pass any order in accordance with law without being influenced with any of the observations as made hereinabove.

With the aforementioned observation the instant revisional application being CO 1189 of 2019 along with all interim applications are hereby disposed of.

Learned Advocate for revisionists is hereby requested to supply a copy of the instant revisional application to the learned Advocate for the newly added opposite party No. 4 preferably in course of this day for his record.

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 shall not persuade himself with any of the observations as made hereinabove while disposing of Misc. Case No. 24 of 2019 on its merit.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)