

June 12, 2023
Sl. No.22
Court No.19
s.biswas

CO 1268 of 2023
Lakshmi Rani Hazra
vs.
Manoj Kumar Agarala and another

Mr. Uttiya Ray
Mr. Arnab Mandal

... for the petitioner

Mr. Tirthankar Dhali Chattaraj

... for the opposite parties

The order dated March 24, 2023 passed in Title Execution Case No.14 of 2018 by the learned Civil Judge (Junior Division), 2nd Court, Burdwan is under challenge before this court.

According to the learned advocate for the petitioner/judgment debtor, during the pendency of the application under Order 9 Rule 13 of the Code of Civil Procedure read with Section 5 of the Limitation Act, the learned court below refused to stay the execution proceedings and directed that the Title Execution Case no.14 of 2018 would proceed in accordance with law.

Learned advocate for the opposite parties denied the contention of the learned advocate for the petitioner/judgment debtor and submits that the Title Suit No.88 of 2014 was decreed ex parte on April 12, 2018. Although the application under Order 9 Rule 13 of the Code of Civil Procedure read with Section 5 of the Limitation Act had been filed,

no steps had been taken by the judgment debtor/petitioner to proceed with the same.

It is further submitted that even the summons have not yet been received by the opposite parties. Hence, the learned court below had rightly rejected the application for stay which was filed after 2 years from passing of the decree.

Mr. Ray, learned advocate for the petitioner, denied the factual allegation made by the learned advocate for the opposite parties.

Perused the records. It is an admitted position that the application for setting aside the ex parte decree and an application of condonation of delay, are pending before the learned court below since long. Learned court below, in all fairness, ought to have stayed the execution proceedings for a limited period and the application for condonation of delay as also the application for setting aside the ex parte decree, if the delay was condoned, ought to have been disposed of first. The order impugned dated March 24, 2023, is set aside.

This Court is of the view that unless stay is granted, the pending applications filed by the defendant will become infructuous.

It is further submitted that possession has been taken in execution.

This court restrains the decree holders/plaintiffs from changing the nature and character of the suit property and/or from alienating or transferring or assigning the property to a third party. No third party rights shall be created. Such interim order shall be operative for a period of four months. Within such time, the application under Section 5 of the Limitation Act shall be heard and if the same is allowed, the proceedings for setting aside the ex parte decree shall be disposed of by the learned court below.

A copy of the application under Section 5 of the Limitation Act and the application under Order 9 Rule 13 of the Code of Civil Procedure shall be served upon the learned advocate for the opposite parties within the course of this week. Such service shall be taken as a good service and no further service of summons shall be required to be served through the learned trial court.

This order is passed only to expedite the proceedings before the learned court below. The opposite parties shall be at liberty to file their written objection to both the applications within two weeks from the receipt of the copies.

The revisional application is disposed of. This court has not entered into the merits of the pending applications.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)