

Item No. 5
03.10.2023
Court. No. 19
GB

C.O. 1370 of 2023

Rafikul Islam & Ors.
Vs.
Mojam Ali Mondal & Ors.

*Mr. Arijit Bardhan,
Mr. Rishab Dutta Gupta*

...for the Petitioners.

*Mr. Asit Baran Raut,
Mr. Tuhin Subhra Raut,
Mr. Asit Kr. Chowdhury,
Ms. Ishita Raut*

...for the Opposite Parties.

The revisional application arises out of orders dated November 18, 2022 and February 9, 2023, passed by the learned Civil Judge (Junior Division), Bidhannagar, District – 24 Parganas (North) in Misc. Case No.198 of 1978.

By the order dated November 18, 2022, the application of the opposite parties for appointment of a valuer commissioner was allowed. The learned court recorded that the learned court was inclined to allow the said order as a similar order had already been passed on July 31, 2014. No reasons were assigned by the learned court and the order was passed without even considering the fact that the order dated July 31, 2014 had been set aside by an order dated September 16, 2015 in C.O. 3074 of 2014.

The petitioners prayed for recalling of the said order by filing an application under Section 151 of the Code of Civil Procedure. The said application was rejected. In the said application, the petitioners had contended before the learned court that the learned advocate, Samar Banerjee who had

been appointed as valuer commissioner, could not be appointed as such, in view of the fact that he had refused to perform his duties as a valuer on an earlier occasion in the same suit. This court is informed that the learned advocate commissioner had already filed a report, which is pending before the learned trial court.

The matter has a chequered history. Misc. Case No.198 of 1978 was pending before the learned court below for partition under Section 4 of the Partition Act. A valuer commissioner was appointed. A report was filed, but the valuer commissioner died. The report was not accepted. The parties were directed to adduce evidence. By order dated June 13, 1995, the Misc Case was allowed with a direction upon the opposite parties to pay Rs.5000/- to the petitioners. A Misc. Appeal 159 of 1995 was filed. The learned court was directed to hear the Misc. Case afresh on remand. The judgment dated June 13, 1995 was set aside.

The Misc Case proceeded. An application was filed by the petitioners for appointment of a valuer commissioner. By order dated July 31, 2014 Mr. Monojit Dey was appointed as the valuer commissioner. C.O. 3074 of 2014 was filed.

C.O.3074 of 2014, was disposed of on merits, by setting aside the order of the learned trial court and the learned trial court was directed to re-hear the matter afresh on the spirit of the order of remand passed by the learned lower appellate court in Misc. Appeal No.159 of 1995.

Mr. Dey again filed a report which is pending in the records. The said report was neither accepted nor rejected.

Mr. Dey was unwell and not in a position to depose in respect of such report. Again, during the pendency of the said report, the opposite parties filed an application under Section 151 of the Code for appointment of a valuer commissioner. An order was passed allowing such application and learned advocate, Samar Banerjee was appointed as a valuer commissioner.

Mr. Raut, learned advocate appearing on behalf of the opposite parties submits that the order impugned does not suffer from any irregularity as the parties would not suffer any prejudice if a new valuer commissioner was appointed in view of the ailment of Mr. Dey and inability of Mr. Dey to depose. Moreover, according to Mr. Raut, the learned lower appellate court in a misc. appeal and also a coordinate Bench of this Court had specifically found the methodology to be incorrect, but none of the courts had arrived at a finding that the case did not require appointment of a valuer commissioner. Thus, according to Mr. Raut, whether Mr. Dey or learned advocate Mr. Banerjee is appointed as a commissioner, the matter has to be adjudicated on the basis of a report of a valuer with regard to the valuation of the property involved in the suit.

The learned court below did not decide the application under Section 151 of the Code of Civil Procedure on merits. The reasons as to why an application under Section 151 of the Code was allowed, are not available. Parties admit that a report is already on record. Without deciding the fate of the said report, in my opinion, the subsequent application for the

self-same relief, should not have been allowed. The orders impugned are set aside. The learned court below is directed to decide the fate of the report, which is pending and submitted by Mr. Dey, before progressing further on the valuation of the property and the disposal of the misc. case.

This Court has not gone into the merits of the issues involved. It is preferable that the examination of learned advocate Mr. Dey should be completed within two consecutive days and if he is prevented by very severe ailment from taking the docks, the parties will bear the cost of evidence on commission. Necessary orders will be passed by the learned court accordingly.

The entire exercise shall be completed within a period of two months from the date of reopening of the court after the puja vacation. The report subsequently filed is also set aside as the appointment of learned advocate, Samar Banerjee, has been set aside.

In the event the court is of the view that the earlier report of Mr. Dey cannot be accepted, the parties shall be at liberty to file fresh application for appointment of a valuer commissioner. However, this Court directs the learned trial judge to take expeditious measures in view of the fact that parties are suffering since long.

Accordingly, the revisional application is disposed of.

All the parties and the learned court below is directed to act on the basis of the server copies of this order.

(Shampa Sarkar, J.)