

12.12.2023
Court No. 19
Item no.30
CP

C.O. No. 1528 of 2023

Sri Pravin Kumar Pandey
Vs.
Smt. Chhaya Karmakar

Mr. Amitabha Ghosh
Mr. Asish Santra
Ms. Nabanita Chatterjee
.....for the petitioner.

Mr. Arnab Roy
Mr. Satyam Mukherjee
Ms. Sayani Ahmed
Mr. Purnendu Shekhar Ghosh
.....for the opposite party.

The petitioner is the judgment debtor who has suffered a decree of eviction. The decree of eviction has been affirmed upto the Hon'ble Apex Court. The decree holder put the decree into execution in 2006. The decree holder filed Misc. Case No. 4977 of 2008 which is an application under Order 21 Rule 97 of the Code of Civil Procedure. The judgment debtor filed an application under Section 47 of the Code of Civil Procedure being Misc. Case No. 8156 of 2008.

It appears from the records that the judgment debtor has been taking adjournments on a regular basis. As a result, the pending applications in the execution case, had not been disposed of.

In the decision of ***Bhoj Raj Garg vs. Goyal Education and Welfare Society & ors.*** decided in

Special Leave Appeal No.19654 of 2022, the Hon'ble Apex Court held as follow:-

“The complaint of the petitioner is that the Execution Court is not abiding by the directions issued by this Court in the decision in ***Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.***, reported in ***(2021) 6 SCC 418***. In the said decision, it was held as follows:-

‘42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:-

2. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.’

This means that it becomes the duty of the Execution Court to dispose of the execution proceedings at the earliest and since this Court has directed that the Execution Court must dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay, this direction is meant to be observed. This would mean that every effort should be made to dispose of the execution petition within the said time limit and the Execution Court should have reasons for not being able to dispose of the execution petition. The Execution Court is duty bound to record reasons in writing when it is unable to dispose of the matter.”

In **Rahul S. Saha (supra)**, it had been categorically held that execution cases should be completed expeditiously. The Hon'ble Apex Court noted the sorry state of affairs and how the provisions of law were being misused to delay execution proceedings.

Thus, taking note of the regular absence of the petitioner, the learned Judge, 11th Bench, City Civil Court at Calcutta, fixed Misc. Case No. 4977 of 2008 (application for execution through police help) for ex parte hearing.

This court is of the view one last opportunity should be given to the petitioner to appear before the court and advance his arguments in the matter. This application under Section 47 of the Code of Civil Procedure should be disposed of first.

However, such order cannot be passed without imposing some costs on the petitioner. Cost of Rs.5000/- shall be paid to the plaintiffs within two weeks from date.

The learned court below, upon satisfaction of the payment of cost and compliance of this order, shall take up the application under Section 47 of the Code of Civil Procedure and dispose of the same within January 15, 2024.

Upon disposal of the application and on the outcome of the said application, Misc. Case No.4977

of 2008 shall be disposed of upon affording the petitioner, one that opportunity to contest the same. Such disposal shall also be mandatorily within February 15, 2024.

It is made clear that no adjournments and no extension, shall be given to any of the parties.

In case of failure to pay the cost, the learned court shall continue with the ex parte hearing of Misc. Case No. 4977 of 2008.

The revisional application is accordingly disposed of.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)