

S/L 20
26.06.2023
Court. No. 29
Suwayan

CO 1379 of 2021

A. N. Industries Private limited & Ors.
Vs.
Smt. Gita Law & Ors.

Mr. Saptangsu Basu, Sr. Adv.
Mr. Jayanta Sengupta
Mr. Abhijit Sarkar
Mr. Abhik Chitta Kundu

...for the petitioners.

1. Learned Advocate for the petitioners is present.
2. The affidavit-of-service as filed on behalf of the petitioners be taken on record.
3. Despite of service none appears on behalf of the opposite parties.
4. By filing the instant revisional application under Section 227 of the Constitution of India the petitioners being the transferee the decreetal property have challenged the orders dated 11.07.2016, 11.08.2016, 04.01.2020 and 07.04.2021 as passed by learned Civil Judge (Senior Division), 9th Court at Alipore in Title Execution Case No. 4 of 2021 whereby and whereunder learned Trial Court rejected the petition under Order 21 Rule 16 of the Code of Civil Procedure as filed by the present revisionists before the said executing Court. The revisionists/transferee of the decreetal property felt aggrieved and, thus, preferred the instant revisional application.
5. In support of the instant revisional application Mr. Basu, learned Senior Advocate for the revisionists at the

very outset draws attention of this Court to the petition under Order 21 Rule 16 of the Code of Civil Procedure which has been annexed with the mark Annexure – C at page 53 of the instant application. Attention of this Court is also drawn to the provisions of the Order 21 Rule 16 of the Code of Civil Procedure. Drawing attention to the order dated 11.07.2016 it is contended by Mr. Basu, learned Senior Advocate that learned Trial Court is not justified in directing the present revisionists/transferee to serve copy of the application under Order 21 Rule 16 of the Code of Civil Procedure upon a third party since on perusal of Order 21 Rule 16 it would reveal that it is not the intention of the legislature to serve copy of the said application upon a third party (who has challenged the execution of decree under Order 21 Rule 97 of the Code of Civil Procedure) except upon the transferor and judgment debtor. It is, thus, contended by Mr. Basu, learned Senior Advocate that in view of such legislative provision learned Trial Court is not at all justified in rejecting the present revisionist's application Order 21 Rule 16 of the Code of Civil Procedure basically on the ground of non-service of notice and/or the non-service of copy of the said application upon the objectors of the decree who have filed independent Misc. case being Misc. Case No. 12 of 2015.

6. On perusal of the entire materials as placed before this Court and after hearing the learned Advocate for the revisionists it appears to this Court that for effective adjudication of the instant revisional application a look to

the provision of Order 21 Rule 16 of the Code of Civil Procedure is required and the same is reproduce hereunder in verbatim:

“16. Application for execution by transferee of decree- Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

[Explanation- Nothing in this rule shall affect the provisions of Section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.]”

7. On perusal of the aforesaid legislative provision, it is absolutely clear that in order to entertain an application under Order 21 Rule 16 of the Code of Civil Procedure there cannot be any requirement to serve copy of the same and/or to serve notice of such application upon any third party who is allegedly claimed to have right, title and interest over the decretal property.

8. Such being the position, this Court considers that the impugned order dated 07.04.2021 as passed in Title Execution Case No. 4 of 2021 by the learned Civil Judge (Senior Division), 9th Court at Alipore, South 24 Parganas is not sustainable in law and the same is hereby set aside.

9. Accordingly the instant revisional application being CO 1379 of 2021 is hereby allowed.

10. Learned Civil Judge (Senior Division), 9th Court at Alipore, District – South 24 Parganas is hereby directed to hear out the petition under Order 21 Rule 16 of the Code of Civil Procedure as filed by the revisionists herein afresh without insisting service of notice upon any third party to the decree which is placed before him for its execution, however, he is directed to ensure that notice of such application has been served upon the decree holder as well as upon the judgment debtor.

11. Considering the long pendency of the matter before the Executing Court, learned Executing Court is hereby directed to dispose of the said petition under Order 21 Rule 16 of the Code of Civil Procedure within a period of two months from the date of communication of this order.

11. Parties to act on the server copies of this order.
12. 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.)