

27.09.2023
Sl. No.5(DL)
srm

C.O. No. 2038 of 2023

Mrs. Saroj Thakar

Versus

Indo Arya Central Transport Limited & Ors.

Mr. Mainak Bose,
Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee

...for the Petitioner.

Mr. Saptangsu Basu,
Mr. Debasish Roy,
Sk. Omar Sarit

...for the Opposite Parties.

The revisional application arises out of an order dated April 21, 2023 passed by the learned Civil Judge (Senior Division), 6th Court at Alipore, in Misc. Case No.53 of 2021. The Misc. Case arises out of Title Execution Case No.183 of 2010.

Mr. Saptangsu Basu, learned Senior Advocate duly assisted by Mr. Debasish Roy, learned Advocate, appearing on behalf of the petitioner has submitted that the jurisdiction of the High Court under Article 227 of the Constitution of India should be invoked by this Court for the following reasons:

(a) The Misc. case, which was filed by the opposite party

No.1 was frivolous as the petitioner had already

succeeded in a suit for eviction up to the Hon'ble Apex Court.

- (b) By setting up the opposite party No.1, an attempt was made to frustrate the fruits of the decree and to cover up the dispossession of the petitioner after possession was taken with the help of the bailiff, in execution of the eviction decree.
- (c) The learned Civil Judge (Senior Division), 6th Court at Alipore, failed to take into consideration such material facts, stated hereinabove. Hence, the court did not exercise the jurisdiction vested upon it by law.
- (d) The third party who resisted the execution, did not prove his independent right and there was no evidence on record to show that he was justified in resisting the execution of the decree. Material evidence that the person resisting such execution was not in possession of the property, was completely ignored by the learned court below.

Mr. Mainak Bose, learned Advocate, duly assisted by Mr. Debjit Mukherjee, learned Advocate, submits that the Order XXI Rule 103 of the Code of Civil Procedure is an alternative remedy. The rights of the parties have been

adjudicated in the misc. case. The remedy of the petitioner would be to file an appeal. Order XXI is a complete Code and the provisions already laid down in the said Code should be adhered to, instead of approaching this Court under Article 227 of the Constitution of India. On the merits, Mr. Bose has submitted that the possession of the opposite party No.1 was found on evidence. As orders have been passed on the merits, based on appreciations of all evidence on record, the finding of the learned court amounts to a deemed decree. Hence, the revisional application will not lie.

This Court is not required to go into the rival contentions of the parties. From the order impugned it appears that the learned court below decided the entire issue and adjudicated the disputes between the parties. When there is a complete adjudication, the remedy of the person aggrieved would be to file an appeal in terms of Order XXI Rule 103 of the Code of Civil Procedure.

The revisional application is accordingly dismissed.

There shall be no order as to costs.

The petitioner is at liberty to take back the certified copy of the order impugned, upon furnishing a photocopy thereof.

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

(Shampa Sarkar, J.)