

27.09.2023
Court No. 19
Item no.06
CP

C.O. No. 2082 of 2023

Sri Sanju Majumder
Vs.
Sri Raju Majumder & anr.

Mr. Satyam Mukherjee
.....for the petitioner.

Mr. Mrinal Das
Mr. Raja Adhikary
.....for the opposite parties.

The revisional application was entertained by this court on the prayer of the petitioner that even if the learned executing court stayed the Title Execution Case No. 27 of 2022, certain conditions ought to have been imposed. Direction was given to serve a copy of the revisional application upon the opposite parties/judgment debtors.

Learned advocate appears on behalf of the judgment debtors. It is submitted that the judgment debtors were residing in the premises as owners thereof, for the last 40 years. They were not aware of the suit. Summons were not served. The deed of gift, by which the mother had bequeathed the property to the plaintiff/decree-holder, was executed surreptitiously. The opposite parties paid for construction of the said property. It is further submitted that an application under Order 9 Rule 13 of the Code of Civil Procedure has been filed, praying for setting aside of the ex parte decree.

Mr. Mukherjee, learned advocate for the petitioner, submits that the contentions of the judgment debtors were incorrect. The mother, who was the exclusive owner of the property had transferred the property by way of a deed of gift to the petitioner and had deposed. The learned court found that the judgment debtors were trespassers. Learned Advocate refers to the decision of this court in the matter of Nanda Lal Sahani vs. P. B. Construction, in C.O. 368 of 2023. The relevant portion of the decision is quoted below:

‘It is the contention of Mr. Ghose, learned advocate for the petitioner, that the petitioner was unaware of the decree as summons of the suit had not been issued. However, these are the issues which will be decided in the Order 9 Rule 13 application if the same is admitted and taken up for hearing.

It is pointed out that no application for condonation of delay in filing the application under Order 9 Rule 13 has been filed.

Under such circumstances, although this court was mindful of passing an interim order staying the execution upon imposing conditions, but under the facts and circumstances, stated hereinabove, when there is no existence of of a misc. case at all, such stay cannot be granted. Unless the delay is condoned the Misc case cannot be registered.

The petitioner is at liberty to take steps in the misc. case in accordance with law, by filing an application under Section 5 of the Limitation Act for condonation of delay. The same shall be heard on merits.’

Be that as it may, it appears from the record that the ex parte decree was passed on July 18, 2022 and the Misc. Case No. 43 of 2023, was filed on April

26, 2023, which is beyond the period of limitation. It also appears that no application under Section 5 of the Limitation Act, for condonation of delay in filing the misc. case has been filed. Thus, in my opinion, there is no proceeding, arising out of the ex parte decree, as on date.

The learned executing court ought not to have stayed the proceedings in such a situation. It was for the judgment debtors to obtain appropriate orders in the misc. case for stay of the execution or the learned executing court could have stayed the proceedings in terms of Order 21 Rule 26 of the Code of Civil Procedure.

Under such circumstances, when there is no misc. case in the eye of law, the order impugned is set aside.

Parties are at liberty to approach the appropriate court for appropriate remedies as available under the law.

This order shall not prevent the judgment debtors from approaching the appropriate court for appropriate relief, in accordance with law.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)