21.09.2023
Sl. No.2(DL)
srm

C.O. No. 1994 of 2022

Jiaur Rahaman @ Jiaul Rahaman & Ors.

Versus

Md. Majibar Rahaman & Ors.

Mr. Sarbananda Sanyal
…for the Petitioners.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. Raihan Ahmed,
Mr. Rudranil Das,
Mr. Soumava Santra
…for the Opposite Parties.

The revisional application arises out of an order dated April 28, 2022 passed by the learned Additional District Judge, 1st Court at Lalbagh, Murshidabad, in Miscellaneous Appeal No.16 of 2021, affirming the judgment and order dated March 17, 2020 passed by the learned Civil Judge (Junior Division), Lalbagh, Murshidabad, in Miscellaneous Preemption Case No.277 of 2015.

Mr. Sanyal, learned Advocate appearing on behalf of the petitioners submits that the learned courts below failed to appreciate that the pre-emption application was filed by non-notified co-sharers and the period of limitation of one year would run from the date the preemptees took possession of the property and would continue for one year from date of such possession.

In this case, the deed was executed on August 30, 2021. The registration was complete on October 18, 2001. Thus, the knowledge of such transfer, was brought in the public domain upon such registration. The date when the factum of registration was entered in the volume, would be the date of knowledge. The pre-emption case was filed on April 30, 2004.

On such factual matrix, both the learned courts below found that the application for pre-emption was time barred. Section 97 of the Limitation Act was taken into consideration, while deciding the bar in filing the pre-emption application.

The other ground of rejection was short deposit. Both the learned courts below found that the preemptors had not only filed the application for pre-emption way beyond the period of limitation, but the said application was also filed without depositing the entire consideration money along with 10% levy.

The Hon'ble Apex Court in the decision of Barasat Eye Hospital versus Kaustabh Mondal reported in (2019) 19 SCC 767, has settled the law with regard to the mandatory requirement of Section 8 of the West Bengal Land Reforms Act, 1955, to deposit the entire consideration along with 10 %

thereof, with the pre-emption application. The said decision has been subsequently followed by the Hon'ble Apex Court in the matter of Abdul Matin Mallick vs. Subrata Bhattacharjee (Banerjee) & Ors. (In Re: Civil Appeal No.3499 of 2022).

On the principles laid down in the decision of Barasat Eye Hospital (supra) alone, the revisional application deserves to be dismissed. It has been specifically held that pre-emption is a weak right. The statutory period of limitation to file the pre-emption case, as also the pre-condition to deposit the entire consideration money as stated in the sale consideration, along with 10% levy, were both declared to be mandatory. The concept of equity would not come into play in such cases. The relevant portion of the judgment is quoted below:-

"**28.** In our view, when the inquiry is being made by the Munsif, whether in respect of the stated consideration, or in respect of any additional amounts which may be payable, the pre-requisite of deposit of the amount of the stated consideration under Section 8(1) of the said Act would be required to be fulfilled. The phraseology "the remainder, if any, being refunded to the applicant" would have to be understood in that context. The word "remainder" is in reference to any amount which, on inquiry about the stated consideration, may be found to have been deposited in excess, but it cannot be left at the own whim of the applicant to deposit any amount, which is deemed proper, but the full amount has to be deposited, and if found in excess on inquiry, be refunded to the applicant.

29. We are, thus, firmly of the view that the pre-requisite to even endeavour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, Section 8(1) of the said Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose.

30. We are not inclined to construe the aforesaid provisions otherwise only on the ground that there are no so-called "penal provisions" included. The provisions of Sections 8 and 9 of the said Act must be read as they are. In fact, it is a settled rule of construction that legislative provisions should be read in their plain grammatical connotation, and only in the case of conflicts between different provisions would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule is made superfluous. [British India General Insurance Co. Ltd. v. Itbar Singh, AIR 1959 SC 1331] The interpretation, as we have adopted, would show that really speaking, no part of either Section 8, or Section 9 of the said Act is made otiose. Even if an inquiry takes place in the aspect of stated consideration, on a plea of some fraud or likewise, and if such a finding is reached, the amount can always be directed to be refunded, if deposited in excess. However, it cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of pre-emption. The full amount has to be deposited.

31. We may also note that, as a matter of fact, the pre-emptor in the present case i.e. the respondent has not filed any material to substantiate even the plea on the basis of which, even if an inquiry was held, could a conclusion be reached that the stated consideration is not the market value of the land.

32. We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give rise to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising rights in pursuance of the valid sale deed executed. In the present case, there is a sale deed executed and registered, setting out the consideration.

33. We are of the view that the impugned order and the view adopted would make a weak right into a "speculative strong right", something which has neither historically, nor in judicial interpretation been envisaged.

34. The last question which arises is whether the respondent can now be granted time to deposit the balance amount. When the direction was so passed, in pursuance of the order of the appellate court, the respondent still assailed the same. The requirement of exercising the right within the stipulated time, in respect of the very provision has been held to be sacrosanct i.e. that there can be no extension of time granted even by recourse to Section 5 of the Limitation Act. [Gopal Sardar v. Karuna Sardar, (2004) 4 SCC 252]

35. As we have discussed above, once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. The two go hand-in-hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited within the time meant for the exercise of the right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right. That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50% of the amount."

Thus, on the point of short deposit, the learned Courts below rightly rejected the pre-emption application.

This court, in CO 451 of 2023, held that the decision in Barasat Eye Hospital (Supra) had retrospective effect as it was a law declared. The relevant portions are quoted below:-

> "Upon a meaningful reading of the decision, it is evident that the object of the said decision was to put to rest the controversy in respect of exercise of such a weak right, especially in the matter of short deposits. The Apex court took note of the fact that the decision would have a far larger ramification, as many cases were pending before this High Court on this point. Secondly, the law was in existence since 1955, but the interpretation of the same in respect of the requirement to deposit the consideration amount was finally put to rest in the decision of **Barasat Eye Hospital (supra)**. It is a law declared on the point and will have a retrospective effect. The Hon'ble Apex Court was of the view that if short deposits were allowed, a weak right would give rise to speculative suits.
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> In the decision of **Abdul Matin (supra),** a similar view was taken by the Hon'ble Apex Court upon relying on the decision in **Barasat Eye Hospital (supra).** The Hon'ble Apex Court was dealing with Misc. Preemption Case No.8 of 2012 which had been filed before the trial court. The Misc. preemption case was dismissed by the trial court. Misc. Appeal No.7 of 2014 was preferred. The Misc. Appeal was allowed and the order of the learned trial court was set aside. The application for pre-emption was allowed on the ground of co-sharership. The first appellate court allowed deposit of the balance consideration money. Aggrieved, the pre-emptee approached the High Court. The High Court dismissed the revisional application by upholding the order of the first appellate court and also upholding the decision of the first appellate to allow a belated deposit of the balance consideration money. Such order was challenged in Civil Appeal No.3500 of 2022. In

such a pending proceeding, the decision of **Barasat Eye Hospital (supra)** was referred to and it was held that the learned lower appellate court was not justified in permitting the preemptor to deposit the balance consideration money with additional 10% and the High Court was also not justified in upholding such decision.

Thus the Supreme Court applied the decision of **Barasat Eye Hospital (supra)** even in a pending pre-emption case of 2012, and set aside the order of the High Court passed in C.O.4266 of 2016. The decision of **Barasat Eye Hospital (supra)** was rendered in 2019.

In the decision of ***Assistant Commissioner, Income Tax Rajkot v. Saurashtra Kutch Stock Exchange Ltd.,*** reported ***(2008) 14 SCC 171***, the Hon'ble Apex Court held as follows:-

"**35.** In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood."

In the decision of ***P.V. George and Others v. State of Kerala and others***, reported in ***(2007) 3 SCC 557***, the Hon'ble Apex Court held that the law declared by a court will have retrospective effect if not otherwise stated to be so specifically.

The decision of the Hon'ble Apex Court is a law declared on the point that deposit of the full amount stated as the sale consideration together with further deposit of 10% was a precondition to filing an application under Section 8(1) of the West Bengal Land and Land Reforms Act, 1995. The conflicting legal position was clarified, interpreted, rectified and altered. The decision has a retrospective effect and will apply to pending proceedings."

The issue whether the decision in Barasat Eye Hospital (Supra) would be applicable in case of a non-notified co-sharer, is no longer res integra. The Hon'ble Apex Court passed the decision in Abdul Matin Mallick (Supra), relying upon the principle of law declared in Barasat Eye Hospital (Supra). Abdul Matin Mallick (Supra) was a case of pre-emption, filed by a non-notified co-sharer.

The other contention of Mr. Sanyal that the learned court below erred in not considering the relevant evidence while deciding the points of limitation, is not accepted. Both the learned courts below, on appreciating the facts and materials on record, as also, the provision of Section 97 of the Limitation Act, arrived at the conclusion that the application was time barred. This Court cannot re-appreciate evidence.

Accordingly, the revisional application is dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)