24.07.2023
Court No. 19
Item 262
CP

C.O. 2296 of 2023

Smt. Gita Pradhan & ors.
Vs.
Contai Co-operative Bank Ltd. & ors.

Mr. Asit Kumar Raut
Mr. Nirmalendu Patra
Mr. Debnarayan Patra
....for the petitioners.

This revisional application is directed against an order dated June 8, 2023, passed by the learned Civil Judge (Senior Division), 2nd Court, Paschim Medinipur in J. Misc. Case No. 13 of 1991.

J. Misc. Case No. 13 of 1991 is an application under Order 21 Rule 90 of the Code of Civil Procedure.

The petitioner's predecessor in interest prayed for setting aside of the sale dated April 17, 1967 and filed the said J. Misc. Case, in connection with Mortgage Execution Case No. 17 of 1966.

By the order impugned, an application for amendment of the application filed in J. Misc. Case No. 13 of 1991, was rejected.

The background is discussed hereinunder:-

In the execution case, the decree holders prayed for realization of the award money upon sale of the mortgaged properties of the judgment debtors.

The highest current value of the property was mentioned in a verified petition.

Accordingly, notices were issued. The sale proclamation on the mortgaged property was issued. The sale proclamation was duly served. The decree holders filed a petition praying for permission to offer their bid at the sale. The judgment debtors appeared by filing a vakalatnama and prayed for one month time to pay the award money (decreetal amount). The prayer of the judgment debtors was rejected. Permission to bid at the sale was given to the decree holder. The sale was held and a date was fixed for confirmation of the sale. The judgment debtors filed an application for stay of the confirmation of sale. The matter was compromised on a solenama on certain terms and conditions, including payment of the defaulted amount. The judgment debtors failed to comply with their obligation under the solenama. The sale was confirmed and sale certificate was issued. The decree holders filed the sale certificate with a prayer for taking possession of the property purchased at the auction. Thereafter, the writ for delivery of possession was issued for execution, with the help of the Nazir.

The matter was awaiting service return when an application under Order 21 Rule 90 of the Code was filed by the predecessors of the petitioners on August 16, 1991. The said application was pending.

The predecessors of the petitioners prayed for setting aside of the sale, on the ground of fraud practiced by the decree holders in Mortgage Execution Case No. 17 of 1966. In the said application, the petitioners wanted to incorporate some facts. An application under Order 6 Rule 17 of the Code of Civil Procedure was filed in J Misc. Case No.13 of 1991.

By way of an amendment, the facts sought to be incorporated were with regard to the financial transactions with the bank and repayment of the loan amount, by the judgment debtors. The bank details were sought to be incorporated.

The petitioners claim to be the successors-in-interest of the judgment debtors who had filed an application under Order 21 Rule 90 of the Code. The judgment debtor contested the execution proceedings throughout.

The learned court found that the facts pleaded in the amendment application were known to the judgment debtors all along. That the award was passed by the Registrar, Co-operative Society, Contai, Medinipur. The suit property was sold on April 17, 1967 pursuant to the orders passed in Mortgage Execution Case No. 17 of 1966. The execution case had been dragging since 1966 and there was no plausible explanation available in the application for amendment, as to how in spite of due diligence, the facts to be incorporated in the application, could not be done earlier. No subsequent events were sought to be incorporated.

Moreover, 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, this Court 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 case 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. Moreover, there was a solenama executed between the parties. The judgment debtors were allowed to pay up the amount. The judgment debtors failed to do so. Thereafter, the sale was confirmed and possession was declared to be delivered with the help of the nazir. At this stage, the question of allowing an amendment with regard to the facts which were all available to the judgment debtors at the relevant point of time, does not arise. The amendment is not bona fide. The real controversy has been adjudicated.

The executing court cannot go beyond the decree and decide the 'lis', by reopening the evidence which was sought to be introduced by way of an amendment along with the bank statement at a belated stage, after 32 years from the filing of the Misc Case. The learned court doubted the bona fide of the petitioners.

The pleadings of fraud, collusion etc. have already been made in the Misc. Case and, hence, further pleadings are not necessary.

The order impugned does not call for any interference.

The court does not find any cogent reason to allow the amendment at such a belated stage as the rights and liabilities of the parties had been finally adjudicated. The award was never set aside by a superior forum. There is no averment that the award was a nullity. Only a confusion was sought to be created by seeking to introduce transactions with the bank.

The revisional application is dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)