

S/L 185
09.01.2023
Court No.652
SD

CO 2318 of 2022
With
CO 2319 of 2022

Smt. Shanti Shaw @ Devi & Anr.
Vs.
Sri Amit Dasgupta & Anr.

Mr. Sayantan Bose
Ms. Madhurima Das
Ms. Ankita Chaudhury
Mr. Sattik Raut

...for the Petitioners.

Mr. Sauradipta Banerjee
Ms. Fatima Hassan

...for the Opposite Parties.

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Miscellaneous Case No.157 of 2017 along with all connected applications from the Court of learned 4th Bench, Presidency Small Causes Court at Calcutta to the Court of learned Chief Judge, Presidency Small Causes Court.

Petitioners contended that the execution proceeding is pending since long. Originally decree-holder as plaintiff filed ejectment suit being Ejectment Suit No.80 of 2011 and the opposite party herein contested the said suit by filing written statement. The suit was finally decreed on February 28, 2017 in favour of the petitioners herein with a direction upon the opposite party herein to hand over and deliver khas possession of the suit property in favour of the plaintiffs/petitioners within a period of two months from the date of passing of the said decree.

The opposite parties failed to deliver vacant possession of the suit property in terms of the decree and therefore, the petitioners put the decree into execution on May 3, 2017 by filing Execution Case No.58 of 2017 before the learned 4th Bench, Presidency Small Causes Court at Calcutta. In the said proceeding, they failed to take possession of the suit property on the specified date due to resistance caused by the opposite parties and for which the petitioners were compelled to file Miscellaneous Case No.157 of 2017 seeking police help to execute the judgment and decree dated February 28, 2017. Thereafter, the opposite parties preferred appeal but the said appeal was also rejected and thereby affirmed the decree dated February 28, 2017.

During pendency of the said second appeal, the opposite party no.2 proposed to surrender the petitioners the entire ground floor and first floor consisting of 7 rooms excluding the privy, kitchen and verandah to the petitioners. Accordingly, Hon'ble Court permitted the opposite parties to surrender. There is no stay and/or restraint on the petitioners from proceedings either of the Ejectment Execution Case No.58 of 2017 or Miscellaneous Case No.157 of 2017.

The petitioners state that the suit property is in a dilapidated condition and may cause harm to human life at any point of time and the petitioners applied before this Court with a prayer for expeditious disposal of the Misc. Case No.157 of 2017 in CO 896 of 2022 and this Court by an order dated April 27, 2022 was pleased to dispose of that CO 896 of 2022 with a direction to make expeditious disposal of the case.

After passing of that order by this Court, the petitioners herein made a prayer before the learned 4th Judge, Presidency Small Causes Court, Calcutta to expedite the matter in terms of the order passed by this Court but on being mentioned, the learned Judge got furious and made some derogatory remarks.

The petitioners state that in view of the provisions expressed by the learned Judge in the court below the petitioners reasonably apprehend that they will not get justice from the learned Judge, 4th Bench, Presidency Small Causes Court and as such, he submits that it is necessary and expedient in the interest of justice that the Miscellaneous Case No.157 of 2017 be transferred to the Court of learned Chief Judge, Presidency Small Causes Court, Calcutta.

Learned counsel appearing on behalf of the petitioners in this context has relied upon the mandatory directions given by the Supreme Court in *Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors.* reported in (2021) 6 SCC 418.

Learned counsel appearing on behalf of the opposite parties submits that the allegations are not true and the court below may be directed to submit a report.

Considered the submissions made by both the parties.

In the normal circumstances, the report would have been called from the court below about the truthfulness of the allegations but I find that since it is an execution proceeding and the object of filing this application by the petitioners is only for expeditious disposal of the said Misc. Case No.157 of 2017 and the Ejectment Execution Case No.58 of 2017, so, a direction to that effect is to be given to the court below.

In *Rahul S. Shah (supra)* Supreme Court has specifically stated in paragraph 42.12 that the executing court must dispose of the execution proceeding within six months from the date of filing which may be extended only by recording reasons in writing for such delay. This order has been passed to all courts dealing with suit and execution proceeding and they are to mandatorily follow the directions (paragraph 42).

In view of the above, CO 2318 of 2022 along with CO 2319 of 2022 is disposed of with a direction upon the court below to make every endeavour for expeditious disposal of the case and shall conclude the execution proceeding including Misc. Case No. 157 of 2017 within a period of three months and if possible by conducting day-to-day hearing in compliance with the direction made by the Apex Court in *Rahul S. Shah (supra)*.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)