

17.4.2023
12
Ct. no. 652
sb

CO 1997 of 2021

Nirmal Kanti Biswas
Vs.
Sri Gouranga Das & Anr.

Mr. Amal Krishna Saha
Mr. Souvik Sarkar ...for the petitioner

Affidavit of service filed by the petitioner is taken on record. Opposite parties are not represented.

Being aggrieved by four orders namely Order no. 47, 48, 49 and 50 passed by the learned Civil Judge (Senior Division), 1st Court, Barasat in Misc. case no. 101 of 2018 arising out of Title Execution case no. 3 of 2009, the decree holder has preferred this application under Article 227 of the Constitution of India.

The petitioner's main contention is that he filed Title suit no. 37 of 1999 before the learned Civil Judge (Senior Division), 1st Court, Barasat and said suit was decreed in favour of the plaintiff and the defendant of the said suit was directed to pay Rs. 2,90,640/- with interest within four months. As the decretal amount was not paid within the statutory period, the petitioner filed Title Execution case no. 3 of 2009 for recovery of an amount of Rs. 4,48,750.60/- (principal, interest and cost).

The opposite party no. 1 filed Misc. Case no. 345 of 2009 under Order IX Rule 13 of the Code of Civil

Procedure for setting aside the decree. The said Misc. case was dismissed by the trial court and the order of dismissal was affirmed by this court in FMAT 141 of 2017. The judgment-debtor/opposite party herein filed an application under Section 47 of the Code being aforesaid Misc. case no. 101/2018 in the said Execution proceeding. On an application for stay, the court below was pleased to stay the execution case pending disposal of the said Misc. case. Against that order, the decree-holder preferred a revisional application before this court being C.O. 1270 of 2019 and this court was pleased to direct the court below for re-hearing of stay application and court below, after re-hearing the said application, was pleased to grant stay on condition that the judgment-debtor shall deposit the entire decretal amount within next date i.e. 18.1.2020. The judgement-debtors who are opposite parties herein, did not comply the said order dated 18.12.2019 as reflected in order no. 47 dated 18.1.2020 and accordingly, the executing court was pleased to direct that the execution case shall proceed in accordance with law.

However, learned counsel for the petitioner submits that though it was observed by the court below, that the execution case shall proceed in accordance with law as the judgment-debtor has not deposited decretal amount in terms of order no. 46 but he has not fixed any date for the execution proceeding being Title execution case no. 3

of 2009 and on the contrary, he is proceeding with the Misc. case only, filed by the judgment-debtor under Section 47 of the Code. Accordingly, the petitioner herein has prayed for a direction upon the court below for disposal of the said Execution case at the earliest.

Since the prayer made by the petitioner is very innocuous and justified, C.O. 1997 of 2021 is disposed of with a direction upon the court below to make all endeavour for expeditious disposal of the Title execution case no. 3 of 2009, which is pending before the learned Civil Judge (Senior Division), 1st Court, Barasat and to conclude the entire proceeding of the said Execution case preferably within a period of twelve weeks from the date of communication of the order.

Accordingly, C.O. 1997 of 2021 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)