

03.10.2023
Court No. 19
Item no.07
CP

C.O. No. 2788 of 2023

Debdutta Sreemany & anr.

Vs.

Sri Debashish Sreemany

Mr. Mainak Bose

Mr. Subhashis Sengupta

Mr. Ritoban Sarkar

Ms. Namrata Chatterjee

Mr. Abhrajit Roy Chowdhury

.....for the petitioners.

Mr. Arnab Roy

Mr. Satyam Mukherjee

Ms. Sayani Ahamed

.....for the opposite party.

The revisional application arises out of orders dated December 13, 2022 and March 22, 2023, passed by the learned Civil Judge (Senior Division), 4th Court at Alipore in Title Suit No. 392 of 2020.

By the order impugned dated December 13, 2022, the learned Civil Judge (Senior Division), 4th Court at Alipore allowed an application under Section 10 of the Code of Civil Procedure, thereby staying all proceeding in Title Suit No. 392 of 2020 till the disposal of Title Suit No. 694 of 2020.

Title Suit No. 392 of 2020 was filed by the petitioners against the opposite party, for a decree of recovery of khas possession, mesne profits, cost and other reliefs. During the pendency of the said suit,

Title Suit No. 694 of 2020 was filed by the opposite party against the petitioners. The opposite party claimed to be a co-sharer in the property which was the subject matter of the earlier suit.

According to the learned court, although the partition suit was filed later, the earlier suit should be stayed. If the earlier suit was decreed and or the status of the opposite party was determined, the claim of the opposite party as a co-sharer in the subsequent suit would not be adjudicated. Proper trial would not be held and the subsequent suit would automatically fail. The decision in the prior suit would operate as *res judicata* in the later suit.

The petitioners filed an application for recalling of the aforementioned order. The learned court below rejected the said application with the same reasons. This revisional application has been filed by the petitioners, being aggrieved by both the orders.

Mr. Bose, learned advocate appearing on behalf of the petitioners, submits that the prior suit could not have been stayed and the order impugned was contrary to the provisions of Section 10 of the Code of Civil Procedure.

Mr. Roy, learned advocate appearing on behalf of the opposite party, submits that the opposite party had filed an application praying for stay of the Title

Suit 392 of 2020. The said application was rejected. The opposite party moved this court by filing C.O. 1861 of 2022 and the order of rejection was set aside. The learned Trial Judge was asked to adjudicate the said application for stay, afresh. Pursuant to such direction of the High Court passed in C.O. 1861 of 2022, the order impugned was passed. When the order impugned was passed, the same was not challenged before this court. Subsequently, an application under Section 151 of the Code of Civil Procedure was filed praying for recalling of the said order.

According to Mr. Roy, when the High Court, while deciding C.O. 1861 of 2022, did not raise any question as to whether the prior suit would be stayed during the pendency of a later suit, further adjudication on the said issue was not called for. He further submits that the petitioners had waived their right to file this revisional application as the order dated December 13, 2022 had not been challenged by any other subsequent revisional application.

Having heard the learned counsel for the respective parties, this court is of the view that both the orders dated December 13, 2022 and March 22, 2023, have been challenged before this court. Admittedly, under Article 227 of the Constitution of

India, there is no specific period of limitation to file such application. There has not been any inordinate delay.

Moreover, the courts are empowered to recall their own orders, by exercise of power under Section 151 of the Code of Civil Procedure, under very special circumstances.

In this case, the petitioners availed of such remedy by asking the court below to recall the order dated December 13, 2022. The court refused to recall the same. Hence, this revisional application has been filed challenging both the orders.

This court does not find that challenge to the order dated December 13, 2022, is barred by law. Under such circumstances, the revisional application is taken up and heard as a whole.

Having perused the cause of action pleaded in the two suits, this court is of the view that both the suits should be heard analogously as similar questions of law and fact arise and evidence in one suit shall be applicable in the other suit.

Under such circumstances, the revisional application is allowed to the extent that Title Suit No. 392 of 2020 and Title Suit No. 694 of 2020 shall be heard and disposed of analogously by the the learned Civil Judge (Senior Division), 4th Court at Alipore.

The learned court below shall adjudicate the suits expeditiously, upon issuing notice to the parties.

The impugned orders dated December 13, 2022 and March 22, 2023 are set aside.

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.)