

04.12.2023
Court No. 19
Item no.09
CP

C.O. No. 3459 of 2023

Smt. Sulata Singh

Vs.

Smt. Basanti Sardar

Mr. S. G. Dostidar

Ms. Sankari Roy

Mrs. S. Mukhopadhyay

.....for the petitioner.

Mr. Gobinda Ch. Baidya

....for the opposite party.

The revisional application has been filed by the judgment debtor, challenging an order by which the writ for recovery of possession was directed to be issued in terms of the judgment and decree passed in Title Suit No. 52 of 2004. The suit was for recovery of khas possession. The decree was passed directing the defendants to vacate the suit premises within one month from date of the judgment. The bailiff was directed to execute the writ by breaking the padlock, after following due procedure. The petitioner/judgment debtor is aggrieved by such order, on the following grounds:

- a) Copy of the application for issuance of the writ was not served.
- b) The writ for recovery could not have been issued as the suit was decreed ex parte.

c) The applicant before the court/opposite party was the substituted heir of the original decree holder.

Considering the contentions of the petitioner, this court finds that the suit was decreed on November 27, 2006. The petitioner filed an application for setting aside the ex parte decree under Order 9 Rule 13 of the Code of Civil Procedure, which was registered as Misc. Case No. 2 of 2007. The said application was dismissed on December 15, 2008.

It does not appear from the records that such order was ever challenged. The plaintiff had filed an execution case, being Title Execution Case No. 01 of 2007.

After the death of the original plaintiff, the opposite party Smt. Basanti Sardar, daughter of Lakshmi Devi Mondal, filed an application for being substituted in the execution case. The contention of the petitioner is that the property had been gifted to one Shatadal Sardar and therefore, Smt. Basanti Sardar did not have any right to be substituted in respect of the decree holder. The learned court allowed the application by an order dated April 29, 2023 and substituted Smt. Basanti Sardar, the sole surviving heir of the deceased decree holder. The

petitioner did not file any objection to the application for substitution.

It is pertinent to mention that first application under Section 47 of Code of Civil Procedure was dismissed for default and second one was dismissed as not maintainable.

Thereafter, an application for issuance of writ of delivery of possession was filed. The petitioner contends that the copy of the same was not served upon the petitioner.

It appears from the order impugned, that the petitioner had filed hazira and the learned advocate appeared and prayed for an adjournment. The learned court did not allow such adjournment and proceeded with the hearing. Thereafter, the order impugned was passed. Thus, the contention of non-service of the application does not appear to be correct. No such submission was made before the learned court.

This court does not find that there is any irregularity or illegality in the order impugned. The decree was passed in 2007. The execution case is dragging since then. Inordinate delay has been caused in the execution proceeding. There is no order from any superior forum, staying the execution. The Hon'ble Apex court, in the matter of decision of ***Bhoj Raj Garg vs. Goyal Education and Welfare***

Society and ors. (SLP No.- 19654/2022) and also in ***Rahul S. Shah vs. Jitendra Kumar Gandhi & Ors.*** reported in ***(2021) 6 SCC 418***, held that execution should be completed within six months and the judgment debtor should not be allowed to continue to resist the execution, only to deprive the decree holder, who had legitimately been awarded a decree of eviction. It also appears that the decree holder gave an undertaking that no appeal was pending and no stay order was subsisting.

However, if the petitioner is successful in obtaining any further decree setting aside the decision of the trial judge, the law provides a mechanism for restoration of possession. The petitioner will be entitled to take such recourse to law, in the event she is successful before any higher forum in getting the decree set aside.

Thus, 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.)