

14.08.2023
Court No. 19
Item No.06
CP/GB

C.O. 3475 of 2022

Shipra Bhattacharjee & anr.
Vs.
Sambhu Mukherjee & ors.

Mr. Vivek Jyoti Basu
Mr. Uttam Kr. De
Ms. Oindrila Ghosal

... for the Petitioners.

Despite service on several occasions, none appears on behalf of the opposite parties/judgment debtors before this court, even today.

The petitioner is aggrieved by an order passed in Title Execution Case No.03 of 2018. By the order impugned, the application filed by the decree holder to deposit Rs.32,000/- being the balance consideration money, was rejected.

It appears that the opposite parties have not been appearing in Title Execution Case No. 3 of 2018 which is pending before the learned Small Causes Court at Sealdah. An insertion in the newspaper with regard to the said execution case arising out of judgment and decree passed in Title Suit No. 91 of 1995 has also been made on December 13, 2020. Despite such insertion in the newspapers, the judgment debtors did not appear before the court.

By a judgment and decree dated September 25, 2008, the suit filed by the petitioners had been

allowed on consent against the defendant nos. 2 on contest against the defendant Nos. 5, 6 and 7 and ex parte against the rest of the defendants.

The plaintiffs got a decree for specific performance of contract pursuant to an agreement dated September 29, 1992 on payment of balance consideration money amounting to Rs.32,000/-. The heirs of the deceased defendant no. 1, were directed to execute the sale deed in respect of the suit property in favour of the petitioner, to the extent of the share of the deceased defendant no. 1 as carved out in Title Suit No. 89 of 1994.

Title Suit No. 89 of 1994 was a suit for partition. The sale was made subject to the decision in the partition suit. The court further directed that the plaintiffs would pay the balance consideration amount of Rs.32,000/- within one month from the decision in the partition suit. Within another one month from the date of deposit of the balance consideration, the legal heirs of late Rajubala Mukherjee, shall execute the sale deed.

It is submitted that against the judgment and decree passed in Title Suit No.91 of 1995 by the learned Judge, Small Causes Court at Sealdah, an appeal was preferred which was dismissed on August 17, 2016. The names of the judgment debtor nos.4 and 6 were required to be expunged from the

judgment and decree as the said names continued despite their legal heirs having been substituted. Such correction was made on July 6, 2019 and a fresh decree was issued. Notice was issued upon the judgment debtors. As the judgment debtors did not execute the deed of sale, execution was filed. The petitioners prayed for leave to pay up the remaining consideration money. By an order dated April 16, 2017, the learned executing court held that the postal receipts with regard to service upon the judgment debtors could not be relied upon. Accordingly, the application under Section 151 of the Code of Civil Procedure filed by the petitioners with a prayer for allowing delayed deposit of consideration money, was rejected.

By order dated March 6, 2021, the learned court recorded that despite a paper publication, the judgment debtors had not appeared in the execution case. The learned court fixed the matter for ex parte hearing. Thereafter, by the order impugned dated March 5, 2023, another application dated March 6, 2021 filed by the decree-holders for permission to deposit the balance amount in the court, was rejected on the ground of delay.

The only ground for rejection of the prayer for deposit of the balance amount in execution of the decree, was delay of five years from dismissal of title

appeal arising out of judgment and decree dated September 25, 2008. There is nothing on record to show that the Title Suit No.89 of 1994 which was pending before the learned Civil Judge (Senior Division) at Sealdah had been disposed of with the passing of the final decree. The preliminary decree was passed on August 31, 2016, which the learned court below took to be the final decree in the partition suit, whereas the learned Judge, Small Causes Court at Sealdah specifically stated that the plaintiff was liable to pay the balance consideration amount of Rs.32,000/- within one month from the decision of the partition suit being Title Suit No.89 of 1994 and within one month from such deposit, the heirs of late Rajubala Mukherjee shall execute the sale deed. Whether one month from the decision of the partition suit being Title Suit No.89 of 1994 should have been interpreted as the decision with the passing of the final decree or the preliminary decree, should have been decided by the court instead of the court mechanically rejecting the application. The date which the learned court below took into account as disposal of the partition suit was the date when the preliminary decree was passed, that is, August 31 of 2016, as appears from the records. Final decision of the partition suit would be the date of disposal of the suit upon pronouncement of the final

decree. There can be more than one preliminary decree. Moreover, the law also permits delayed deposit of balance consideration money.

The learned counsel is not in a position to apprise the Court either with regard to the final decree or as to whether there was a final decision in the partition suit. Thus, this Court is of the view that the learned Civil Judge (Senior Division), Small Causes Court at Sealdah could not have rejected the application filed by the petitioners on March 6, 2021 without first ascertaining whether the final decision was passed in the partition suit being Title Suit No.89 of 1994, and also without considering the legal provisions.

The order impugned is set aside on the above grounds. The application filed by the petitioners shall be heard afresh by the learned executing court upon taking into consideration the final outcome of the partition suit and also upon taking into consideration that the delay in this case had occurred on account of other procedural and technical irregularities. The delay if at all, were not entirely referable to any negligence on the part of the decree-holders. The said application shall be heard afresh and disposed of within a period of four months from date of communication of this order. The period which was consumed from the date of filing of the

application till the disposal of the revisional application before the learned court, shall not be taken into consideration as any delay in the prayer made by the petitioners for deposit of the balance consideration money.

Accordingly, the revisional application is disposed of. The order impugned is set aside.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)