

S/L 40  
19.01.2023  
Court No.652  
SD

CO 3621 of 2022

Ganapati Mansion Pvt. Ltd.  
Vs.  
Dinesh Kumar Srivastava & Anr.

*Mr. Rahul Karmakar*  
*Mr. Sounak Mukherjee*  
*Mr. Sourav Guchhait*

*...for the Petitioner.*

This is an application under Article 227 of the Constitution of India challenging the order dated September 7, 2022 passed by the learned Civil Judge (Senior Division), 2<sup>nd</sup> Court at Barasat in Arbitration Execution Case No.10 of 2020 arising out of A.P. 740 of 2016.

The petitioner contended that the petitioner being the claimant has commenced the reference for specific performance of an agreement for sale of a land and opposite parties duly contested the said arbitration proceeding by filing their statement of defence and finally the proceedings were concluded in favour of the petitioner by way of an award dated February 27, 2019.

The petitioner stated that the said award has been accepted by both the parties and it has not been challenged. The petitioner after waiting the statutory period moved the said award into execution before the learned District Judge at Barasat which was registered as the aforesaid Arbitration Execution Case No.459 of 2019.

The petitioner states that on March 20, 2020 due to the absence of P.O., the case was adjourned to September 9, 2020 when it was fixed for verification and further order. The opposite parties never appeared or contested the arbitration execution case and the petitioner is suffering for no fault of his own and the petitioner is devoid of enjoying the usufructs of the award.

Accordingly, the petitioner has prayed for a direction upon the court below for expeditious disposal of the execution case.

It appears from the certified copy of orders that after 20.11.2021 the case got misplaced and on 14.02.2022 it was not placed before the concerned court. However, on 07.9.2022 the concerned case record was put up before the court but a date was given after almost one year for verification and further order.

Since the prayer for passing a direction upon the court below for expeditious disposal of the execution case is innocuous and if it is disposed of in the absence of the judgment debtor, in terms of aforesaid prayer neither party will have any cause to prejudice and as such, the process of serving copy of the revisional application and notice upon the opposite parties are dispensed with.

In view of the facts and circumstances of the case, CO 3621 of 2022 is hereby disposed of with a direction upon the learned Civil Judge (Senior Division), 2<sup>nd</sup> Court at Barasat to make expeditious hearing of the Arbitration Execution Case

No.10 of 2020 arising out of A.P. 740 of 2016 and to make every endeavour to conclude the entire proceeding of the said execution case preferably within a period of six months from the date of communication of the order, keeping in mind the principles laid down by the Hon'ble Apex Court in paragraph 42 of ***Rahul S.Shah Vs. Jitendra Kumar Gandhi and others*** reported in **(2021) 6 SCC 418**.

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.)**