

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO NO. 4390 of 2007

Sri Dipak Das

-Versus-

Sri Nimai Parial & Ors.

For the Petitioner : Mr. Gopal Ch. Ghosh, Advocate,
Mr. R.K. Mondal, Advocate.

For the Opposite Parties : Mr. Tapas Ghosh, Advocate,
Mr. Tanmay Chowdhury, Advocate.

Hearing concluded on : 07.12.2023

BEFORE

PRASENJIT BISWAS, Judge

Date: 22.12.2023

Prasenjit Biswas, J:-

1. The instant application is filed by the petitioner under Article 227 of the Constitution of India challenging the impugned order dated 29th August, 2007 passed by the learned Additional District Judge, Fast Track Court, First Court at Arambag in Civil Revision No. 1 of 2007.

2. By passing the impugned order dated 29th August, 2007 the learned Additional District Judge, Fast Track Court confirmed the order dated 28th July, 2004 passed by the learned Civil Judge (Junior Division), First Court at Arambag in connection with Title Suit No. 24 of 2002.

3. The learned Civil Judge (Junior Division) First Court at Arambag by its order dated 28th July, 2004 dismissed the suit filed by the plaintiffs for non-compliance of the order passed by the Court.

4. Smt. Gita Rani Das (since deceased), predecessor-in-interest of the plaintiffs no(s). 1 and 2 filed a suit for declaration and other reliefs against the defendants before the Court of learned Civil Judge (Junior Division), First Court at Arambag in respect of the scheduled properties as mentioned in the plaint. Defendant No(s). 1, 2 and 3 entered their appearance in the suit and filed their written statements. During pendency of the said Title Suit being No. 24 of 2002 sole plaintiff Gita Rani Das expired on 28th May 2002 and her heirs/legal representatives being the plaintiffs no(s). 1 and 2 were substituted on the strength of an application filed by them under Order 22 Rule 3 of the Code of Civil Procedure. Thereafter the defendant no(s). 2 and 3 filed an application in that suit under Order 3 Rule 1 read with section 151 of the Code of Civil Procedure and also read with Sections 45 and 73 of the Indian Evidence Act. The plaintiffs filed their written objection to the aforesaid application filed under Order 3 Rule 1 read with Section 151 of the Code of Civil Procedure filed by the defendant no(s). 2 and 3. After hearing the learned Civil Judge (Junior Division), First Court at Arambag allowed the said application by passing order dated 22nd December 2003. Being aggrieved by and dissatisfied with the said order passed by the Trial Court in connection with Title Suit No. 24 of 2002. The constituted attorney of the plaintiffs

filed an application under Article 227 of the Constitution of India before this Court and the same was registered as CO No. 210 of 2004.

5. The said Revisional Application being CO No. 210 of 2004 was dismissed by this Court by passing an order dated 4th February, 2004 with the observations that the order impugned in the said revisional application is not in the nature that if it is allowed to stand it would have the effect of disposing of the suit. Challenging the said order passed by this Court dated 4th February, 2004, the plaintiff preferred a Special Leave Petition before the Hon'ble Apex Court and the same was registered as special leave to Appeal (Civil No. 10922 of 2004) and the said aforesaid Special Leave Petition was dismissed as withdrawn by the order passed by the Hon'ble Apex Court.

6. It is to be mentioned here that the defendant Nos. 2 and 3 filed the application under Order 3 Rule 1 read with Section 151 of the Code of Civil Procedure in Title Suit No. 24 of 2002 challenging the genuinity of the Power of Attorney through which Power of Attorney holder one Dilip Dutta prosecuted the suit and the learned Trial Court disposed of the said application filed by the defendant Nos. 2 and 3 with direction upon the plaintiffs to appear in person before the Court. The said order was travelled up to the Apex Court and in all the forums the applications filed by the plaintiffs have not been entertained. Thereafter, an application is taken out by the defendant no(s). 2 and 3 filed under Section 151 of the Code of Civil Procedure in the said Title Suit No. 24 of 2002 pending before the learned Trial Court with a prayer for dismissal of the said suit for non-compliance of the order passed by the learned Trial Judge dated 22nd December 2003. The copy of the said application dated 28th July 2004 filed by the defendant Nos. 2 and 3 was served upon the learned advocate of the plaintiffs. Despite getting copy of the petition the plaintiffs did not appear when the petition was called on for hearing and no step was taken by the plaintiffs against the

petition filed by the defendant Nos. 2 and 3 dated 28th July 2004. Learned Trial Court heard the petition ex-parte and after consultation with the materials on record dismissed the suit being Title Suit No. 24 of 2002 filed by the plaintiffs for non-compliance of the order passed by the Court.

7. Being aggrieved by and dissatisfied with the order of dismissal of the suit being Title Suit No. 24 of 2004 the plaintiffs preferred an appeal before the learned District Judge, Hoogly which was subsequently transferred to the Court of Additional District Judge, Arambag, Hoogly for disposal and the same was registered as T.A No. 26 of 2004. As the plaintiffs were not present the same was dismissed for default by passing an order of the Court on 10th August, 2006. Thereafter, an application was filed by the plaintiffs under Order 41 Rule 19 of CPC with a prayer for readmission of appeal which was dismissed for default and the same was registered as Misc. Case. and the said Misc. Case was allowed on consent and the appeal was restored to its original file and number. It is to be noted here that the revisional application filed by the plaintiffs was preferred before the Appellate Court causing delay and as it was not filed within the stipulated period of time an application under Section 5 of the Limitation Act was filed by the plaintiffs with prayer for condonation of the said days of delay. Subsequently, the plaintiffs/appellants filed the petition before the learned Additional District Judge, Arambag with a prayer for conversion of the said appeal into a revisional case filed under Section 115 A of the CPC. The prayer for conversion of the appeal into revisional case was allowed by the learned Additional District Judge, Arambag by passing an order dated 27 June, 2007 and the application filed by the plaintiffs under Section 5 of the Limitation Act was also disposed of by the Appellate Court.

8. It appears from the materials on record that by passing an order dated 22.12.2003 the learned Civil Judge (Junior Division), First Court at Arambag directed the plaintiffs to appear before the Court which was challenged by the plaintiffs at first before this Court by filing a revisional application being CO No. 210 of 2004 which was dismissed by this Court and thereafter the matter travelled to the Hon'ble Apex Court as the order passed by this Court was challenged by this plaintiffs by filing a Special Leave Petition being special leave to Appeal (Civil No. 10922 of 2004) and the aforesaid Special Leave Petition was dismissed as withdrawn by passing an order by the Hon'ble Apex Court. As the order passed by the learned Trial Court was not interfered with by the Appellate Courts the defendant Nos. 2 and 3 filed an application before the Trial Court where the Title Suit No. 24 of 2002 was pending with a prayer for dismissal of the suit for non-compliance of the order passed by the Court. The Copy of the application filed under Order 8 Rule 9 of the Code of Civil Procedure was served upon the learned Advocate of the plaintiffs, despite that they did not venture to appear before the Court when that petition filed by the defendant was called on for hearing. Thereafter the matter was heard ex-parte in the presence of defendants Nos. 2 and 3 and the Trial Court dismissed the suit preferred by the plaintiffs by passing order dated 28th July, 2007.

9. It appears from the impugned orders passed by the Courts that since filing of the suit the plaintiffs showed a defiant and reluctant attitude to proceed with the case.

10. At the time of hearing Mr. Gopal Chandra Ghosh, learned Senior Counsel appearing on behalf of the petitioners submitted that the learned Trial judge as also the learned First Revisional Court failed to exercise their jurisdiction in not considering the fact that the Special Leave Petition filed before the Hon'ble Apex Court was not dismissed on merit but it was dismissed as withdrawn. Learned Counsel

further assailed that the First Appellate Court acted with material irregularity in not considering the point that while disposing of the CO No. 210 of 2004 this Court observed that direction passed by the learned trial judge in connection with title suit No. 24 of 2002 is not of the nature and if it is allowed to stand it would have the effect of disposing of the suit. As per submissions of the learned Counsel that the First Revisional Court erred in law and acted illegally and with material irregularity in passing the impugned order under challenge in this revisional case.

11. Mr. Tanmay Chowdhary, learned Counsel appearing on behalf of the opposite parties Nos. 1, 2 and 4 assailed that in spite of several opportunities given to the plaintiffs they failed to comply with the Court's order and ultimately the plaintiff's suit was dismissed. Learned Counsel further submitted that there is no illegality or irregularity in the impugned order passed by the Trial Court as well as First Appellate Court.

12. In case on hand the petitioner was served with the copy of the petition filed by the defendants yet he failed to appear before the court at the time of hearing. The opportunity was given to him but he did not avail of the same. The argument advanced on behalf of the petitioners does not inspire confidence of this Court and it appears that since filing of the suit before the Trial Court the attitude of the plaintiffs in conducting the case or to proceed with the case cannot be said to be appreciable. Whether the plaintiffs would still deserve sympathy of this Court coupled with an order of revival of the suit by condoning such laches? The answer would be 'no'. Such a situation cannot be contemplated and therefore, I must hold that the Court can dismiss a suit for non-compliance with the Court's order as was done by the Trial Court in connection Title Suit No. 24 of 2002. If the arguments of the

plaintiffs/petitioners prevail, then it will open up a flood gate for flouting the Court's order with impunity.

13. Therefore, I do not find any scope of interference of the orders passed by the Trial Court as well as First Appellate Court. The learned Trial Judge rightly dismissed the suit filed by the plaintiffs for non-compliance of the Court's order and the First Revisional Court rightly confirmed the order passed by the Trial Court by passing the impugned order under challenge dated 29th August, 2007 passed in Civil Revision No. 1 of 2007.

14. Accordingly, I find there is no merit in the present revisional case being CO No. 4390 of 2007 and the same is dismissed on contest.

15. Interim order, if any, stand vacated.

16. There will be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)