

AD-08
Ct No.01
Jalpaiguri
01.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CO 133 of 2022

Sankar Roy
Vs.
Sri Mahadeb Roy and others

Mr. Abhinaba Das,
Mr. Nitish Samanta

...for the petitioner

Learned counsel for the petitioner challenges an order passed by the Additional District Judge, Fourth Court at Jalpaiguri whereby the miscellaneous appeal filed by the opposite party/preemptee was allowed, setting aside the order of the trial court and dismissing the preemption case of the petitioner on the ground of non-fulfillment of prerequisite conditions in terms of the directions of the Apex Court.

It is seen from the observations made in the impugned order of the Additional District Judge that as far back as on June 10, 2019, a coordinate Bench of this court had dismissed a revisional application of the petitioner and directed the petitioner/preemptor to deposit the assessed market value of the suit property, that is, Rs.5 lakh plus 10 per cent, that is, Rs.5,50,000/,

less the already paid amount of Rs.4,62,000/- within a period of four weeks from the date of the order. The Additional District Judge further went on to hold that the preemptor has not deposited the deficit amount of Rs.4,62,000/- in view of the direction of the said court. In the miscellaneous appeal, the Additional District Judge came to the conclusion that as per the latest position of law, in terms of the decision of the Apex Court, the entire sale price plus 10 per cent has to be deposited by the preemptor within the stipulated period along with the application and there is no scope of extension of time under Section 5 of the Limitation Act.

I do not find any patent jurisdictional error or miscarriage of justice in the impugned order inasmuch as the District Judge proceeded on the right legal premise. As such, the petitioner's prayer for belated deposit of the said amount cannot be granted at this stage, particularly when the petitioner lost the chance before the trial court.

It is well-known that the scope of a miscellaneous appeal is limited and it is extremely doubtful as to whether the petitioner can be given an opportunity at the appellate stage to rectify the patent defect committed during pendency of the preemption application in the trial court itself.

In such view of the matter, CO 133 of 2022 is rejected without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)