

OD 4

ALP 5 of 2022
IN THE HIGH COURT AT CALCUTTA
EXTRA ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

ANISUR RAHMAN MOLLA LAND ORS.
VERSUS
SIRAJUDDIN MOLLA AND ORS.

BEFORE:

The Hon'ble Justice AJOY KUMAR MUKHERJEE

Date : 11th January, 2023.

APPEARANCE:

Mr. Haradhan Banerjee,Adv.
Mr. Asit Kumar Bhattacharya,Adv.
...for the petitioner.

Mr. Kallol Basu,Adv.
Mr. Bratin Kr. Dey,Adv.
...for judgment-debtor.

The Court:- This is an application under Clause 13 of the Letters Patent Act, 1981 read with Section 24 of the Code of Civil Procedure for withdrawing the Execution case, being Pre-emption Execution Case No. 1/1984 arising out of Misc. Case No. 46/1973, pending in the Court of learned Civil Judge (Jr. Division) 3rd Court Alipore to this Hon'ble High Court.

The petitioner contended that the predecessor-in-interest of the petitioner filed aforesaid Misc. Case under Section 24 of the West Bengal Non-Agricultural Tenancy Act, 1949 seeking Pre-emption of the Property, purchased by the predecessor-in-interest of the opposite party in the month of April, 1973

and the said Misc. Case under Section 24 of the said Act for pre-emption was decreed by the learned Trial Judge on 12th May, 1981 on contest. Thereafter the predecessor-in-interest of the opposite party had preferred an appeal being Misc. Case No. 349/1981 before the learned District Judge at Alipore and the said appeal was dismissed on contest with costs on February 5, 1983. The then opposite party preferred a revisional application before the Hon'ble High Court at Calcutta being C.O. No.1331 of 1983 and the said revisional application was dismissed on contest on 9th February, 1983. A review application was filed before the Hon'ble High Court being C.R. 1689 of 1984 which was ultimately dismissed for non-prosecution. Thereafter, in 1984 the predecessor-in-interest of the petitioner filed aforesaid execution case before the Court below for execution of the decree. The Bailiff submitted a report that the predecessor-in-interest of the opposite party had resisted the Bailiff to take delivery of possession by the decree-holder and, accordingly, submitted report before the Executing Court on 20th April, 1986. Thereafter, the predecessor-in-interest of the opposite party preferred an application under Section 47 of the Code of Civil Procedure which was registered as Misc. Case No. 34/1986 praying for dismissal of the aforesaid Misc. Execution Case No. 1/ 84 and upon hearing both the parties, the Executing Court allowed the said Misc. Case 34/1986 on 16th March, 2002, holding decree in pre-emption case was invalid and inexecutable and, consequently, Misc. Case No. 1/1984 was dismissed. The predecessor-in-interest of the petitioner filed Misc. Appeal No. 131/2000 before

the learned District Judge, Alipore against said order dated 16th March, 2002 and subsequently the same was converted as civil revision case No.16 of 2007. Subsequently, the said Civil Revision, Case was allowed and the Misc. Execution Case 1/1984 was restored. In the meantime, West Bengal Land Reforms Act, 1955 was amended thereof changing the definition of "Land" under Section 2(7), Rayoti under Section 2(10) of the Act and Section 3 and Section 3A of the West Bengal Land Reforms Act, 1955. The said Act was further amended giving the effect of vesting on and from 9th September, 1980 in respect of rights of non-agricultural tenant and under tenancy in non-agricultural land to vest in the State.

Being aggrieved by and dissatisfied with the order in revisional application by dismissing the application under Section 47 of the Code of Civil Procedure and by restoring the execution case, the opposite party being substituted heirs of the judgment-debtors, preferred a revisional application being C.O. 1428 of 2012 and upon hearing the parties, the said revisional application was dismissed being devoid of merits.

Petitioner states that the trouble of the petitioners has started when the execution case no. 1/1984 was levied then application under Section 47 of the Code was filed on 6th May, 1986 when upon hearing after about 16 years, on 6th March, 2000 it was allowed by the Executing Court by dismissing the execution case. An appeal being 131/2000 was preferred before the learned District Judge, Alipore and thereafter it was observed by the learned District

Judge at Alipore by converting the appeal into a civil revision under Section 115A of the Code of Civil Procedure. Then about 10 years had elapsed in disposing the revisional application by passing conversion order which was accepted by the predecessor-in-interest of the opposite parties and on contest the revisional application was allowed by dismissing the application under Section 47 of the Code by restoring the execution case. After restoration of the execution case, an application under Article 227 of the Constitution of India was filed on 20th November, 2012 and the order of the Court below was affirmed.

The petitioner contended that having regard to the facts and circumstances of the case, it appears that by one way or the other the case is being delayed for a long period of time depriving decree holder from getting fruits of decree for the last 38 years and the decree-holder could not execute the decree for one reason or the other. He further submits that the Executing Court ought to have directly issued a writ of possession and to render police assistant to the Bailiff of the Court. In view of this fact that the learned Executing Court had shown negligence for not passing an appropriate order, the decree-holder has already filed petition under Rule 208 of the Civil Rules and Order for execution of decree through Police help but Executing Court has not yet fixed said application for hearing. Accordingly, the petitioner apprehends that he will not get justice from that Court and, as such he prays

for withdrawal of the said execution case from that Court and further prays for transfer of the same before this Court for execution.

Learned Counsel appearing on behalf of the judgment-debtor/opposite party submits that the present application is not maintainable as execution case itself is not maintainable before the Trial Court. He further submits that grounds for transfer stated in the petition are not sufficient to allow his prayer for transfer.

I have considered submissions made by both the parties. In the present application transfer of Execution case has been sought for by the decree holder, being frustrated having deprived of being not getting fruits of the decree since 1984. In the *Rahul K. Shah Vs. Jihendra Kumar Gandhi* (2021)6 SCC 418 Apex Court passed mandatory directions to all Courts dealing with suits and execution proceeding which includes executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

In view of above though transfer of execution case has been sought for only on the ground that inordinate delay is causing by Executing Court to execute the decree, which may not be an appropriate ground for seeking transfer but it is expedient in the fact and circumstances of the case that a direction is required to be passed to the Execution Court for expeditious disposal of the execution case being 1/1984 strictly in compliance with the direction passed by Apex Court in *Rahul S Shgah* (Supra) Judgment.

Having considered the submissions made by the parties and also in view of the judgement of the learned Apex Court reported in Rahul S Shah (Supra) case, the aforesaid transfer application is hereby disposed of with a direction upon the Executing Court to dispose of the execution case being 1/1984 arising out of Misc. Case No. 46/1973 at the earliest preferably within a period of six months from the date of communication of the order, in compliance with the direction made by the Apex Court as above.

ALP 5/2022 is, accordingly, disposed of.

Urgent website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)