

05.02.2024
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Ct. no. 652
sb

CO 370 of 2018

**Safiruddin Seikh, since deceased, rep. by
Tara Bibi @ Tara Beoa
Vs.
Rup Chand & Ors.**

Mr. Shibendra Nath Chattopadhyay
Mr. Priyam Misra
Mr. Amitava Chakraborty
Mr. Sanket Chandra
Ms. Silky Bhattacharya
Ms. Ankita Mishra ...for the Petitioner

Affidavit of service and a fresh copy of supplementary affidavit filed by the petitioner are taken on record.

Opposite parties are not represented.

This application has been preferred against Order no. 240 dated 13.6.2017. It is submitted on behalf of the petitioner that the opposite parties herein as plaintiffs filed partition suit being no. 67 of 1970 against the predecessor in interest of the petitioner as defendant and the said suit was decreed in fixed form on contest. The defendant no. 9 and others preferred first appeal against said decree being FAT no. 1120 of 1990 before this High Court but said appeal was dismissed by this court. Thereafter two execution cases were started being execution case no. 9 of 1993 and 10 of 1993. One Maniruddin Ahmed and Nazrul Seikh filed

Misc. case in the said execution proceeding being Misc. case no. 61 of 2007 under Section 47 of the Code of Civil Procedure. Thereafter, the petitioner in the said Misc. case made a prayer before the court below by filing an application under Order XXIII rule 1 of the Code that the petitioner does not want to proceed with the said application filed under Section 47 of the Code of Civil Procedure. However, learned court below while passing the order in connection with said application, instead of dismissing the Misc. case being no. 61 of 2007, he passed an order that the “instant suit is dismissed for non-prosecution”.

The error is apparent palpably on the face of record. Accordingly, court below is directed to correct the order no. 240 dated 13.6.2013 passed in Misc. case no. 61 of 2007 in the ordering portion to that extent only by deleting the words “instant suit” and by incorporating in its place, the words “Misc. Case no. 61 of 2017”.

Since the execution proceeding is pending for a considerable period of time, the court below is directed to dispose of the execution application along with all other pending Misc. cases, if any, preferably within a period of six months from the date of communication of the order.

C.O. 370 of 2018 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)