

06.11.2024

Sl. No.34

Ct. No.30

sg

CO/530/2024

in

IA. No. CAN/1/2024

Supriya Debey

Vs.

Amar Nath Sadhu & Ors.

Mr. Abhijit Roy

Md. Ayaan

Ms. Sneha Dutta

....for the petitioner.

- 1.** Affidavit of service filed in Court be kept with the record.
- 2.** CAN/1/2024 is moved praying for substitution of deceased opposite party no.1. It is submitted that his legal heirs are already on record and as such necessary endorsement may be made. In respect of deceased opposite party no.1, the knowledge of his death has been acquired by the petitioner as per postal endorsement when the petitioner sought to serve the opposite party no.1.
- 3.** The present revisional application has been preferred against an order no.41 dated 09.01.2024 passed by the learned Judge 7th Bench, City Civil Court, Calcutta in Misc. Case No. 587 of 2021 arising out of Ejectment Execution case No. 63 of 2016 (Amar Nath Sadhu .Vs. Smt. Arati Dutta).

4. It is the case of the petitioner that she has received an application under Order 21 Rule 97 of the Code of Civil Procedure Code read with Rule 208 of Civil Rules and Orders filed by the opposite parties.
5. In paragraph 1 of the said application reference has been made to an Ejectment Suit No. 3 of 2012 of the learned trial Court as well as judgment and decree passed in the said suit as well as ejectment execution case no. 63 of 2016.
6. Petitioner states that she has no knowledge of the proceedings as she was not a party in the said case. As such the petitioner filed an application before the Trial Court praying for direction upon the decree holders to serve copies of relevant documents in connection with Ejectment Suit no. 3 of 2012 and other relevant documents.
7. By the order impugned dated 9.01.2024 passed by the learned trial Court (executing) the said application filed by the petitioner was rejected.
8. On perusal of the order under revision it appears that the learned Judge, City Civil Court has been pleased to reject the said application of the petitioner praying for copies of the relevant documents.
9. The relevant findings of the learned Trial Judge is as follows:-

“.....as already mentioned, after going through the entire written objection, which is full of rambling and repetition, I did not find any specific averment regarding any specific legal character of the present obstructionist, O.P. No.4.

It is particularly in this petition/misc. case only where obstructionist being O.P. No.4 has to justify her resistance to the execution of decree and thus she should stand on her own footing. From the context of the petition under Order XXI Rule 97 and Written objection – it appears that there is nothing in the petition and the Written objection which demands further consideration of any factual aspect of the suit in this misc. case.

From the above fact it appears to me that no substantial purpose would be served by supplying the copies of the said documents as prayed for. The obstructionist O.P. No. 4 knows which property she is possessing and how she entered the possession of the same. So, it is her burden to justify her obstruction. Thus, it appears to me that the petition under consideration has been filed only to delay the matter and hence it is rejected with cost of Rs. 500/- to be deposited in the fund of the D.L.S.A. Kolkata.

To 07.03.2024 for evidence of the petitioner in the first half.....”

- 10.** It appears that the order under revision has been passed in misc. case No. 587 of 2021. A copy of the said application which was served upon the petitioner herein has been annexed to the revisional application.
- 11.** In spite of service there is no representation on behalf of any of the opposite parties/decreed holders.
- 12.** On perusal of the said petition filed in misc. case no. 587 of 2021, this Court finds that **the present petitioner has been impleaded as**

opposite party no.4/Resister in the present case.

- 13.** It is the case of the petitioner that she is in possession of the Suit property. It is further submitted that she was not made a party in the original Ejectment Suit inspite of being in possession of the suit property. It is further submitted that the decree has been obtained behind the back of the petitioner and thus by committing fraud.
- 14.** Section 47 of the Code of Civil Procedure lays down questions to be determined by the Court executing the decree.
- 15.** It appears from the order of the learned Trial Judge that admittedly, it was the petitioner herein, who has been made a resister in the application for police help, as she obstructed the bailiff and did not permit the execution of the said decree.
- 16.** As such it is for the petitioner to approach the Executing Court claiming relief (questions to be determined) under Section 47 of the Code of Civil Procedure.
- 17.** The case of the petitioner hearing comes within explanation II(a)(b) of Section 47 of the Code of the Civil Procedure and is thus disposed of with the direction that the petitioner shall be at liberty

to approach the appropriate forum under the appropriate provision of law to address her reliefs under the law, which shall consider the application if any, in accordance with law.

- 18.** Pending applications stand disposed of.
- 19.** Interim order, if any, stands vacated.
- 20.** Let a copy of the order be sent to the learned trial court at once.
- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)