

26.02.2024
Sl. No.11(DL)
srm

C.O. No. 585 of 2024

Sri Biswanath Pal

Versus

**Musammat Amina Khatun (since deceased), represented by
her legal heirs Md. Serajul Islam & Ors.**

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Mr. Ankit Chatterjee

...for the Petitioner.

1. The revisional application has been filed challenging an order dated February 2, 2024 passed by the learned Civil Judge (Junior Division), 3rd Court at Basirhat, in Title Execution Case No.01 of 2014. Title execution case arises out of Title Suit No.144 of 1989.
2. The petitioner was the defendant No.2. The suit was for eviction and recovery of khas possession. The suit was decreed on April 1, 2013. First prayer for execution with police help was allowed on September 21, 2021, but the decree could not be executed.
3. By the order impugned, the learned court allowed an application under Order XXI Rule 97 of the Code of Civil Procedure, filed by the decree-holder for police

help for execution of the writ of delivery of possession.

4. The petitioner contends that in the name of taking possession of the decretal property, the process server was actually trying to take possession of another property in respect of which a suit is pending. The present suit was filed and the decree was passed in respect of the shop on Dag No.1855, whereas the bailiff identified the wrong dag and tried to take possession of the shop on Dag No.1856. Thus, without identification of the shop on Dag No.1855, the writ of delivery of possession could not be executed with the help of the police.
5. The suit was contested by the petitioner. In the suit, the petitioner filed his written statement. The petitioner as the defendant No.2, in Title Suit No.144 of 1989, was aware of the identity and location of the shop which was under the possession of the defendants and in respect of which the decree had been passed. It is nobody's case that the shop on Dag No.1855 could not be identified or could not be separated from the other shop rooms. The decree

could not be executed even after 10 years from the passing thereof.

6. Under such circumstances, this Court does not find any reason to interfere with the order impugned. It is submitted by the petitioner that the petitioner does not have any objection if the possession is taken of the decretal property, which is on Dag No.1855.
7. The learned court did not pass any order with regard to Dag No.1856 and it is neither the case of the bailiff or the judgment-debtors that the shop on Dag No.1855 could not be identified. At this stage, when there is neither any application pending in the execution case by the judgment-debtor nor any appeal pending in any superior court, this Court is not required to go into the question of executability of decree. The judgment-debtors cannot resist the execution in the facts and circumstances discussed above. The property will be identified on the basis of the schedule in the decree.
8. In the decision of *Bhoj Raj Garg vs. Goyal Education and Welfare Society & ors.* decided in *Special Leave Appeal No.19654 of 2022*, the Hon'ble Apex Court held as follow:-

“The complaint of the petitioner is that the Execution Court is not abiding by the directions issued by this Court in the decision in *Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.*, reported in (2021) 6 SCC 418. In the said decision, it was held as follows:-

‘42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:-

2. The 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.’

This means that it becomes the duty of the Execution Court to dispose of the execution proceedings at the earliest and since this Court has directed that the Execution Court must dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay, this direction is meant to be observed. This would mean that every effort should be made to dispose of the execution petition within the said time limit and the Execution Court should have reasons for not being able to dispose of the execution petition. The Execution Court is duty bound to record reasons in writing when it is unable to dispose of the matter.”

9. In *Rahul S. Saha (supra)*, it had been categorically held that execution cases should be completed expeditiously. The Hon’ble Apex Court noted the sorry state of affairs and how the provisions of law were being misused to delay execution proceedings.

10. The revisional application is, thus, disposed of without any interference.

11. There shall be no order as to costs.

12. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)