

M/L 68
11.11.2024
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 822 of 2024

Smt. Nayan Ghosh & Anr.
Versus
Tarun Ghosh

Mr. Nonigopal Chakraborty
... For the Petitioners.

Mr. Ayan Banerjee
Ms. Debasree Dhamali
... For the opposite party

1. The present revisional application has been filed, inter alia, challenging the order no.58 dated 1st September, 2023 in Misc. Judicial Case No.10 of 2022, arising out of Title Execution Case No. 17 of 2016, passed by the learned Civil Judge, (Junior Division) 1st Court, Chandernagore, Hooghly.
2. The petitioners are the judgment debtors. The petitioners would submit that in a suit for recovery of possession the petitioners had suffered a decree for eviction in respect of the said suit property on 25th February, 2016.
3. Being aggrieved, the petitioners/judgment debtors had filed a Title Appeal which was registered as 01 of 2017. By a judgment dated 20th November, 2021, the said Title Appeal was dismissed on contest and the judgment and decree passed by the learned Civil Judge (Junior Division), 1st Court, Chandernagore on 25th February, 2016 in Title Suit No. 1874 of 2014 was

affirmed. Since then, the plaintiff/opposite party had put the decree into execution. According to the petitioners/judgment debtors although, the petitioners did not obstruct the bailiff, and despite the bailiff/process server having not visited the petitioners' property on 13th December, 2021 or any other date, a report to the contrary was prepared by the process server/bailiff. In any event, it is submitted that the application for police help under Order XXI Rule 97 of the Code of Civil Procedure was belatedly filed beyond the time prescribed. The petitioners had contested the same by filing written objection. Unfortunately, the learned Trial Judge by order no.58 dated 1st September, 2023, by overlooking the objection raised by the petitioners had allowed the application for police help.

4. Mr. Chakraborty, learned advocate appearing in support of the revisional application by drawing attention of this Court to the provisions of Article 129 of the Limitation Act, 1963, would submit that the plaintiff/decreed holder was obliged to file the application for police help, if at all, within 30 days from the date of obstruction. Admittedly in this case, no such application was filed within the time prescribed. Notwithstanding the aforesaid, the learned Judge had purported to allow the application for police help. By drawing attention of this Court to paragraph 6 of the written objection filed by the petitioners in the

application for police help, it is submitted that it has been categorically stated that the process server did not visit the suit premises on 13th December, 2021 or on any other date and as such there was no cause of action for filing the application under Order XXI Rule 97 of the Code of Civil Procedure or for police help. Independent of the above, it is submitted that the petitioners have already filed a Second Appeal which has been registered as SAT 129 of 2021 along with a stay application being CAN 01 of 2021. The said appeal is yet to be disposed of. He would submit that this Hon'ble Court may be pleased to defer the grant of police help, for a period of six months so that in the interregnum the petitioners can take steps for disposal of the Second Appeal.

5. Mr. Banerjee, learned advocate appearing on behalf of the plaintiff/opposite party would submit that admittedly in this case, a decree for eviction has been passed in favour of the plaintiff. The petitioners did not comply with the terms of the decree. Though the decree for eviction was passed, the petitioners did not vacate the suit property, and on the contrary had filed the Title Appeal. The Title Appeal was dismissed by a judgment on 20th November, 2021. Notwithstanding the aforesaid, since the petitioners did not comply with the decree, the decree was put to execution. According to Mr. Banerjee, the bailiff had visited the suit premises

on 13th December, 2021 to take possession when he was obstructed. Since, the matter was made returnable on 11th February, 2022 an application for police help was made on that date. Since there was a marginal delay in filing the application, the learned Judge had accepted the explanation put forward by the petitioner and had allowed the application. According to Mr. Banerjee, the bailiff as also the witnesses who put the signature on the bailiff's report were duly examined and the bailiff had identified his signature. Having regard thereto, it cannot be said that there is any irregularity in the order. The revisional application has been filed with the sole objective to delay the execution of the decree. The Second Appeal is yet to be admitted and as such there is no appeal in the eye of law. This Hon'ble Court may be pleased to, in the given facts, dismiss the revisional application.

6. Having heard the learned advocates appearing for the respective parties and taking note of the materials on record, I find that the objection raised by the petitioners is two-folds; firstly that the application for police help couched under Order XXI Rule 97 of the Code of Civil Procedure had been filed belatedly beyond the time prescribed under Article 129 of the Limitation Act, 1963. Secondly, the petitioners argue that the bailiff/process server had never visited the suit premises. To substantiate the same, the learned

advocate for the petitioners have drawn attention of the Court to the statements made in the written objection in that regard. He submits that in the facts noted herein, the learned Judge had exceeded his jurisdiction in allowing the application for police help. I, however, find that the learned Judge has relied on the report of the bailiff which records that the process server/bailiff had visited the suit premises on 13th December, 2021. In any event in the present case, although the application has been captioned as an application under order 21, rule 97 of the code, yet the same in effect appears to be an application seeking police help and not for removal of obstruction. It is not the case of the petitioners that they claim under any independent title. As such the learned judge also did not adjudicate any such right and had passed the order for police help by treating the same as an application for police help. It is also the petitioners' case that they did not offer any obstruction, as such having regard thereto the limitation as provided in Article 129 of the Limitation Act would not start to run. Rule 208 of the Civil Rules and Orders sanctions grant of police help even before specific obstruction. In view thereof, the order on such ground does not require interference.

7. On the question whether the learned Judge had exceeded his jurisdiction in allowing the application for police help since the same was filed beyond time

prescribed, I, find that the learned Judge had accepted the explanation given by the plaintiff/opposite party for filing the application on the returnable date. The limitation for possession after removing the resistance or obstruction to delivery of possession to immovable property decreed is 30 days from the date of resistance or obstruction but the application for police help cannot come within this category. In my view, the application filed by the plaintiff/opposite party is not by itself an application for possession nor is it an application under Order 21 Rule 97 of the Code of Civil Procedure though the plaintiff/opposite party had filed the application as such. Ordinarily, in an application for police help the applicant's prayer is to give him the aid of police for the purpose of execution of the decree and for obtaining possession, the prayer in this case is no different. Thus, this police help is in aid of taking delivery of possession. The same is in fact a subsidiary prayer to the parent application for execution. The above application filed by the plaintiff/opposite party for police help, in my view, which is not an application for possession by removal of obstruction within the meaning of Order 21 Rule 97 of the Code of Civil Procedure is thus, not an original proceeding. The police help for execution of the decree is an entirely different matter. It may be noted that this Court has framed specific rules for dealing with such an

application for police help which take in consideration both anticipated and actual obstruction. In this connection Rule 208 of the Civil Rules and Orders provides for guidelines for subordinate Courts.

8. Having regard thereto, the discretion exercised by the learned Judge in accepting the application for police help in my view, does not appear to be irregular. Although, the petitioners would submit that there is a Second Appeal pending, I have been informed by the learned advocates appearing for the respective parties that such appeal is yet to be admitted. Since, the appeal is yet to be admitted there cannot be any question of stay.
9. In view thereof, I do not find any irregularity far less any illegality in the order impugned.
10. The revisional application is accordingly dismissed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)