

02 **25.09.
2024**

Ct. No. 08

Ab

CO 838 of 2024

**Tollygunge Bejoyee Sangha
Vs.
Smt. Maya Das and another.**

**Mr. Aniruddha Chatterjee,
Mr. Iftekar Munshi.
... for the petitioner.**

This revisional application is directed against an order dated 20th May 2023 passed by the learned Civil Judge (Junior Division) 1st Court at Alipore, South 24-Parganas, in Miscellaneous Case no. 84 of 2022 by which an application under Section 47 of the Code of Civil Procedure (in short 'Code') was dismissed.

A suit for recovery of possession filed by the decree holders against the judgment debtor/petitioner stood decreed and affirmed up to the appellate stage. The decree was put into execution and several objections were raised in relation thereto.

An application under Section 47 of the Code is filed raising several points touching upon the merit of the decree including one that the petitioner being a Club, no leave under Order I Rule 8 of the Code was obtained. The scope under Section 47 of the Code is very limited, the Executing Court shall consider the case within three parameters, namely, execution, discharge and satisfaction of the decree.

Whether the leave under Order I Rule 8 was obtained by the decree holders/plaintiffs or not was a matter, which could have been taken at the time when the suit was instituted. Once the judgment debtor/defendant suffered a decree, such point is not available under Section 47 of the Code. A further plea is taken that there is a wrong description of the decreetal

property and, therefore, it has an impact on the executability thereof. Whether the property has been properly described or not is a matter, which does not come within the peripheral of Section 47 of the Code, as the Executing Court is competent enough to see that the decree is executed as passed by the Court of First Instance.

From the 1st paragraph of the impugned order, the Executing Court has succinctly jotted down the objections raised in the said application, which, in my opinion, does not come under the peripheral of Section 47 of the Code.

The judgment debtor shall not be permitted to reopen the decree taking recourse to Section 47 of the Code nor the Executing Court can exercise power as an Appellate Court to look into the veracity and the legality of the judgment, which is put for execution.

Therefore, I do not find any infirmity and/or illegality in the ultimate decision of the Executing Court.

The revisional application sans merit. The same is hereby dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

