

09.12.2024
Item No.
ML 11
Saswata

C.O. 1181 of 2024

**Nawal Rajak (Baitha)
versus
Joy Prakash Singh**

Mr. Chittaranjan Chakraborty
Mr. Sumit Banerjee
Ms. Puspa Rani Jaiswal

...For the petitioner

Mr. Gopal Ghosh, Ld. Sr. Adv.
Mr. Prasanta Kumar Banerjee
Ms. Indrani Nandi

...For the opposite parties

1. Although, the instant revisional application has been filed challenging the order dated 5th January 2024 passed in Misc. Case no. 10/2016 arising out of Title Execution no. 02/2015, the learned advocate appearing for the petitioner, on instruction submits that the petitioner is not interested to challenge the said order dated 5th January 2024 rejecting the application under Section 47 of the Code of Civil Procedure 1908 (in short the Code) any further and would submit that the pending application under Order IX Rule 13 of the Code, seeking recall of the ex parte decree which is registered as Misc. Case no. 26/24 may be directed to be disposed of expeditiously.
2. The aforesaid application is contested by the opposite parties.
3. By drawing attention of this Court to the order dated 19th December 2023, it is submitted that although a previous revisional application was filed challenging the imposition of costs on the petitioner, which was registered as C.O. No.4005 of 2023, the Coordinate Bench of this Court by the aforesaid order dated 19th December 2023 had refused to entertain such challenge and had only directed that the application under Section 47 of the Code which had been filed by the petitioner challenging the satisfaction, execution and discharge of the decree, be disposed of

within two months from the next date by allowing the plaintiff/decreed holder to be cross examined on a single day by the defendants, subject to payment of costs to be paid by the defendant to the plaintiff's advocate or to the plaintiff in the Learned Trial Court within 5th January 2024. As on that date there was no application for setting aside of the decree.

4. It is submitted that since the petitioner did not make payment of the costs and did not avail the opportunity to cross examine, the matter was heard and decided on 5th January 2024. He submits that no further indulgence should be shown to the petitioner as despite obtaining a decree dated 17th January 2012, in his favour, the plaintiff has not been able to reap the benefits thereof.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, since it is submitted that an application has been filed by the petitioner under Order IX Rule 13 of the Code, I am of the view that such application must be disposed of though the maintainability thereof be considered at the outset.

6. The Learned Trial Judge thus, should hear out and dispose of the application under Order IX Rule 13 of the Code as aforesaid as expeditiously as possible preferably within a period of one month from the date of communication of this order without granting unnecessary adjournments to either of the parties provided, the same is otherwise maintainable.

7. With the above observations and directions, the revisional application being C.O. no. 1181 of 2024 is disposed of.

8. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)