

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1299 of 2023

Celine Noronha
Vs.
Md. Ansar Ali

Mr. Debdipto Banerjee
Mr. Soumen Banerjee
... For the petitioner

1. Affidavit of service filed in Court today is taken on record.
2. In spite of service, none appears on behalf of the opposite party.
3. This revisional application has been filed assailing the order dated 18th July, 2022 and the order dated 2nd March, 2023 passed by the learned Civil Judge (Senior Division), 10th Court, Alipore in connection with Title Execution Case No.16 of 2018 whereby the learned Judge relying on a decree, recorded an order that after execution of deed of conveyance and registration in favour of the decree-holder, the decree was found satisfied fully.
4. Learned counsel appearing on behalf of the petitioner has submitted that the decree-holder filed a suit for specific performance of contract in respect of a flat mentioned in the Schedule "B" to the plaint and the

said suit was decreed which was put into execution finally and prayer for police help was allowed and the cost for police assistance was deposited accordingly. Thereafter, the learned Judge refused to proceed with the execution case further holding, inter alia, that the decree of execution of conveyance and its registration has already been complied with. No other order was passed in the decree.

5. Learned counsel appearing on behalf of the petitioner has drawn my attention to the judgment passed in the Title Suit No.49 of 2005, particularly to the observation made by the learned Trial Judge before passing the final order. The suit for specific performance of contract was filed along with the following prayers:-

“a) A decree for specific performance of the said contract/agreement dated 12-11-95 against the defendant for sale of the said flat morefully described in the Schedule ‘B’ below comprised in the land morefully described in the Schedule ‘A’ below including the proportionate share of undivided land thereof and delivery of peaceful vacant possession of the said flat to the plaintiff in a running habitable conditions for use and occupation of the plaintiff.

b) A decree for damages for breach of contract at present for Rs.500/- and ultimately on ascertainment of same through Ld. Court.

c) Permanent injunction restraining the defendant and his men and agents from selling

transferring parting with possession of the said flat morefully described in the Schedule 'B' below and/or any portion there to any person except the plaintiff.

d) A decree for mandatory injunction be issued directing the defendant to execute and register the Deed of Conveyance in respect of the sale of the said flat morefully described in the Schedule 'B' below including proportionate share of undivided land in respect of the said suit flat comprised within the land morefully described in the Schedule 'A' below and further to direct the defendant to deliver up possession of the said flat to the plaintiff within a stipulated time as may be determined by the Ld. court.

e) For Cost of the Suit.

f) Advocate Commissioner;

g) Receiver;

h) Leave under order 2 rule 2 C.P.C.

i) For other relief or reliefs which the plaintiff is entitled in law and equity."

6. From the prayer (a), it is found that a decree for specific performance of contract dated 12th November, 1995 was sought for against the defendant for sale of the flat mentioned in the Schedule 'B' to the plaintiff with proportionate share of the undivided land and also delivery of peaceful vacant possession of the said flat to the plaintiff in a running and habitable condition.

7. That prayer (a) was allowed by the learned Trial Judge in the penultimate paragraph which runs as follows:-

“In view of the discussion made above, this Court is of the view that the plaintiff has been able to prove her case in respect of prayer (a) and is entitled to get a decree as prayed for.”

8. Therefore, the learned Judge by the judgment categorically allowed the prayer (a) wherein both the execution of deed of conveyance and delivery of possession was sought for.

9. In the aforesaid view of the matter, the learned Judge cannot deny the execution with regard to the delivery of possession of the flat on the ground of incomplete decree passed by the Court.

10. On the same score, the order dated 18th July, 2022 stands set aside.

11. Learned Judge is requested to make necessary correction in the decree and to proceed with the Execution Case, being No.16 of 2018.

12. Learned Judge is also requested to dispose of the Execution Case No.16 of 2018 within four weeks after the ensuing Christmas vacation.

13. With the aforesaid observations, the revisional application, being CO 1299 of 2023, stands disposed of.

14. Interim order, if any, stands vacated.

15. Connected application, if any, also stands disposed of.

16. Learned counsel appearing on behalf of the petitioner is at liberty to bring this order to the notice of the learned Civil Judge (Senior Division), 10th Court, Alipore, forthwith.

17. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

18. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)